TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. [illegible].87.

MARCELO TIGLAO, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS ET AL.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

FILED DECEMBER 14, 1907.

(20,932.)

(20,932.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 529.

MARCELO TIGLAO, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS ET AL.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of Land Registration.

Cause No. 495.

MARCELO TIGLAO, Applicant; THE ATTORNEY GENERAL and THE JUDGE ADVOCATE GENERAL OF THE UNITED STATE ARMY in Opposition Thereto.

Be it known by the present Bill of Exceptions that in the above entitled cause the following proceedings were had in the Court of Land Registration.

On the 5th day of February, 1904, Sr. Marcelo Tiglao presented his application in the following manner:

UNITED STATES OF AMERICA, *Philippine Islands:*

To the Honorable Judge of the Court of Land Registration:

I, Marcelo Tiglao, the undersigned, request, in accordance with the provisions of the Land Registration Act the registration of the property of which I am the absolute owner, and the description of which is as follows:

A parcel of land situated in the barrio of Dolores, town of Mabalacat, Province of Pampanga, Luzon, Philippine Islands;

Bounded on the Northeast by lands belonging to Don. Mariano Pamintuan, to the heirs of Mariano Morales, of Fermina Pamintuan, and of Saturnino Samson; on the Southeast by lands of
2 Lorenzo Sanchez, lands of the Government lying within the radius of Mabalacat and Mount Tacondo, or Lucas Carrillo; on the Southwest by the creek called "Sapang-Batu," or lands belonging to Modesto Paras, to Gil Deliza, to the heirs of Wenceslao Pamintuan, and by the hill called "Batiuan"; on the Northwest by hills and land belonging to the Government and within the jurisdiction of Mabalacat, by the creek called "Litang," or the property belonging to the heirs of Don Vicente Michel, and by the hill called "Mabatib;" with a total area of one thousand two hundred and eighteen hectares, sixty-two ares, and eighty-one centiares (1218 hectares, 62 ares, and 81 centar-s) as is shown in the map attached to this record.

The property described was assessed in the last assessment made for the purpose of collecting the territorial tax for $2000.00, United States currency.

To the best of my knowledge and belief there exists no incumbrance whatsoever on the land, no person claiming any right or interest in the same.

I obtained the said property by purchase, unconditional and in perpetuity, from Dona Rosa Juarez y Medina, by virtue of an instrument dated 7th of November, one thousand eight hundred and ninety-eight, executed by her in my favor.

The said property is occupied in part by a Military Post called Stotsenberg, under the *the* command of Colonel Hatfield, whose first name is unknown to me; and another part by tracks and a station belonging to the Manila to Dagupan Railroad, owned by a company which at the present time is managed and directed by Mr. Horace L. Higgins.

3 The names and addresses of the owners of the adjoining properties are to my knowledge the following: Don Mariano Pamintuan (Angeles, Pampanga); Quintin Morales, Valentin Morales, Feliciano Morales, Juliana Morales, Severa Morales, Teodora Morales, Feliza Morales, and Simeon Morales, heirs of Mariano Morales (Mabalacat, Pampanga); Saturnino Samson (Mabalacat, Pampanga); Fermina Pamintuan, (San Fernando, Pampanga); Lorenzo Sanchez, (Angeles, Pampanga); Lucas Carrillo, (Angeles, Pampanga); Modesto Paras, (Angeles, Pampanga); Gil Deliza, (Calle Dulumbayan, No. 110, District of Santa Cruz, Manila); Pedro Pamintuan, Nicolasa Pamintuan, Severina Pamintuan, heirs in the- own right, and Trinidad Pamintuan as representative, of Wenceslao Pamintuan, (Angeles, Pampanga); Alejandro Pamintuan and Manuela Pamintuan, who as minores should be represented by their mother Benita Espiritu, heirs also by right of succession of Wenceslao Pamintuan, (San Fernando, Pampanga), and Maria Michel, Asuncion Michel, Francisco Michel and Mercedes Michel, heirs of Vicente Michel, (Calle Alix No. 136, District of Sampaloc, Manila).

That I am married to Feliciana Mendiola, and at no time since the date of our marriage up to the present time have our conyugal relations been interrupted either by suit for divorce or by annullment of marriage.

My Christian name, surname, age, residence and address are as follows: Marcelo Tiglao, 33 years of age, resident of Mabalacat, Pampanga, Luzon, Philippine Islands Postal Address—Mabalacat, Pampanga, Philippine Islands).

Angeles, Pampangi, P. I., February 5th of the year one thousand nine hundred and four.

(Signed) MARCELO TIGLAO.

4 List of documents attached to this record: Gratuitous cession of this property by the Gobernacillo and Principales (Mayor and town council) of Mabalacat, Province of Pampanga, dated July 13th, 1873, in favor of the first occupant, Don Rafael Lacson, for him to cultivate and make use of freely; private instrument of sale, unconditional and in perpetuity, of this property, in the Tagalog language, executed by the said Rafael Lacson in favor of Don Pedro Carrillo and his wife Dona Edilverta Juarez, in Calumpit, Province of Bulacan, on May 6th, 1881, with translation in Spanish attached to same; copy of the muncupative will executed by Don Pedro Carrillo on the 7th of February, 1889, naming his wife Dona Edilverta Juarez as his fiduciary heir; copy of the will of Dona Edilverta Juarez, executed on the 5th day of February, 1892, in which she as fiduciary heir of the said Pedro Carrillo states

that the property left to her in trust by the latter had been delivered to the heirs and trustees Dona Maria Paz Juarez and Dona Rosa Juarez, there being included in the said estate the property which is the subject matter of this application; and a copy of the instrument of sale executed by Rosa Juarez in favor of Marcelo Tiglao on the 7th of November, 1898.

UNITED STATES OF AMERICA, *Philippine Islands:*

PROVINCE OF PAMPANGA, P. I.,
ANGELES, *February 5th*, 1904.

I hereby certify that the said Marcelo Tiglao, to me known as the person who signed the foregoing application, personally appeared before me and stated under oath that the contents of the same, based upon his knowledge of the subject matter, is the truth, and that he believes to be true all the statements therein contained, according to the information which he possesses; deponent exhibited to me his certificate of registration No. 608989, issued in the Municipality of Mabalacat, Pampanga, on the 24th May, 1903.

(Signed) BARTOLOME TABLANTE,
Justice of the Peace.

There is a seal which reads:
Justice of the Peace Court-Jure-Angeles Pampanga.
The Clerk will attach this document to the map and exhibits detailed in the application.
On the 17th day of August, 1904, the Court notified all parties who had any interest in said land to appear on the 7th day of October, 1904, at 9:00 a. m. to show cause why the application should not be approved.

On the 22nd day of September, 1904, the Commanding General of the Philippines Division made opposition to the application as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of Land Registration.

Case No. 495.

In re Application of MARCELO TIGLAO to Register and Confirm Title to Land in the Barrio of Dolores, Pueblo of Mabalacat, Pampanga Province, Luzon.

Now comes Lieutenant Colonel H. C. Carbaugh, Judge Advocate, U. S. Army, under authority of the Commanding General Philippines Division, and in the interests of the United States of America, in the matter of notice from the Clerk of the Court of Land Registratio of the Philippine Islands, in case No. 495, that one Marcelo

6 Tiglao has made application to said Court to register and confirm his title in a piece of land situated in the barrio of Dolores, pueblo of Mabalacat, Pampanga Province, Luzon, P. I., and makes answer to said application as follows:

I. That the title to the land described by the petitioner Marcelo Tiglao, is in the United States of America, and the land was set aside under Section 12, of the Act of Congress, approved July 1st, 1902, entitled "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands and for other purposes," for military purposes by the President of the United States, on September 1st, 1903, as announced in General Orders of the War Department, Numbered 34 and dated Washington, D. C., Oct. 13th, 1903, a copy of which General Orders is attached hereto, marked "Exhibit "A," and made a part hereof; and as shown by map hereto attached, marked "Exhibit "B," and made a part hereof.

II. Thirty years' possession does not authorize registration of title to any part of this land in the petitioner, nor does Section 6, Act 627 of the Philippine Commission, as said section is without force and effect, being in violation of the Act of Congress approved March 2nd, 1901, (Vol. 31, Statutes at Large, page 910), providing that there shall be "no sale, lease or other disposition of the Public Lands" without the consent of Congress in the Philippine Islands, and in violation of Section 12 of the Act of Congress approved July 1st, 1902, establishing a government for the Philippine Islands; nor does Act 926 of the Philippine Commission, as said law has no application to lands reserved for military purposes, as in this case.

(Signed) H. C. CARBAUGH,
Lieutenant Colonel and Judge Advocate, U. S. Army.

On the 4th of October, 1904, the Commanding General of the Philippine Division filed his answer to the application, as follows:

7 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of Land Registration.

Case No. 495.

In re Application of MARCELO TIGLAO to Register and Confirm Title to Land in the Barrio of Dolores, Pueblo of Mabalacat, Pampanga Province, Luzon.

Now comes Lieutenant Colonel H. C. Carbaugh, Judge Advocate, U. S. Army, under authority of the Commanding General Philippines Division, and in the interests of the United States of America, in the matter of notice from the Clerk of the Court of Land Registration of the Philippine Islands, in case No. 495, that one Marcelo Tiglao had made an application to said Court to register and confirm his title in a piece of land situated in the barrio of Dolores, pueblo de Mabalacat, Pampanga Province, Luzon Island, P. I., and makes answer to said application as follows:

1. That the document dated 13th July, 1873, in which it appears that Don Tomas Esento, Gobernadorcillo and other officials and the town council, ceded the title to said land to Don Rafael Laeson is null and void, for the reason that the said Gobernadorcillo was not authorized by law to make such cession.

2. That the copy of the instrument of sale dated 7th November, 1898, attested by Don Mateo de Castro, provisional Presidente of the town of Mabalacat (Pampanga) under the Revolutionary Government, and executed with the consent and approval of the husband of the vendor, Don Francisco Lintag y Rivera, and issued by the member of the Council of Justice of the Provisional Revolutionary Government of Pampanga Province, Don Ramon Valdez y
8 Angeles, on the 8th November, 1898, is null and void, and can not be admitted as a public documento for the reason that it was authorized by an official not recognized under the American Sovereignty in these Islands.

(Signed) H. C. CARBAUGH,
Lieutenant Colonel and Judge Advocate, U. S. Army.

On the 4th of October, 1904, the Attorney General representing the Insular Government filed opposition to the application, as follows:

UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of Land Registration.

In Case No. 495, *re* the Application for Registry of Land Situated in Dolores Mabalacat, Pampanga, Presented by MARCELO TIGLAO, Plaintiff,

versus

THE INSULAR GOVERNMENT ET AL., Defendants.

Now comes the Insular Government, by the Solicitor General, and says:

That Marcelo Tiglao makes application for registering, in accordance with the Land Registration Act, of a parcel of land which he claims to be the absolute owner of, situated in the barrio of Dolores, town of Mabalacat, Pampanga Province, P. I., which is bounded on the Northeast by lands belonging to Don Mariano Pamintuan, to the heirs of Don Mariano Morales, of Fermina Pamintuan, and of Saturnino Samson; on the Southeast by lands belonging to Lorenzo Sanchez, by those of the Government within the jurisdiction of Mabalacat and Mount Jacondo, or Lucas Carrillo; on the Southwest by the creek called "Sapang-Batu, or the lands of Modesto Paras, Gil Deliza, the heirs of Wenceslao Pamintuan, and by the hill called "Batiauan;" on the Northwest by lands and
9 hills belonging to the Government and lying within the jurisdiction of Mabalacat, and by the creek called "Litang," with a superficial area of one thousand two hundred and eighteen hectares, sixty-two ares and one centiare.

It has not been proved nor has it been alleged that the petitioner or the parties from whom he acquired his rights obtained any title whatever from the Spanish Government either by purchase or by compact to the land the registration of which is petitioned for, nor that any Possessory proceedings had been had in the manner prescribed by the Royal Decree of the 13th February, 1894, *in re* forestry regulations. It is presumed therefore that the land in question belongs to the Insular Government, it is not having been proved that the title to the same has ever passed into private hands by any of the methods established by the laws governing Crown lands. Opposition is therefore made to the registration applied for and we pray the Court to deny the application, with costs against the petitioner.

Manila, October 4th, 1904.

(Signed) GREGORIO ARANETA,
Solicitor General.

The hearing in the matter having been held on the 9th day of November, 1904, in the town of Angeles, Pampanga, P. I., the petitioner introduced in support of his application the testimony of the witnesses Leon Lacson, Francisco de Guzman, Francisco Lintag, Valentin Morales, Ludovico Narciso and Teodoro Lacson, and the documents attached to the application.

The Clerk will attach to this bill the testimony of the witnesses named in the foregoing paragraph.

On the 26th day of January, 1905, the Court of Land Registration rendered the following decision:

10 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Court of Land Registration.

Case No. 495.

MARCELO TIGLAO, Applicant.

Decision.

The applicant in this case asks registration in his name of a tract of land measuring some 1,218 hectares in extent, situate in the barrio of Dolores, pueblo of Mabalacat, province of Pampanga.

Oppositions to the application have been filed by the Insular Government and by the Commanding General of the Philippines Division, on the ground that the applicant is without proper title and the lands claimed are public lands.

The title of the applicant is deraigned as follows:

On July 3, 1873, the Gobernadorcillo and Principales of the pueblo of Mabalacat, executed an instrument which recited as follows:

(1.) That Rafael Lacson, a resident of Angeles, had stated that he had seen certain land within the comprehension of Mabalacat (describing the lands by natural monuments), and that he desired

to "cultivate" such lands if not inconvenient to the Gobernadorcillo and Principales;

(2.) That the lands being uncultivated and serving as a refuge for ladrones and Negritos, the Gobernadorcillo and Principales did not find it inconvenient to grant his request, and they therefore gave and ceded the said lands to him on condition that he reside
11 in Mabalacat, without which requisite the possession of such lands would not be admitted;

(3.) That being advised of such condition, the applicant, Laeson, agreed thereto, and the lands were declared his legitimate property, with the right to devise same to his descendants. The area of such land is not given.

On May 6, 1881, Rafael Laeson, by a private instrument written in Tagalog, conveyed the land in question, together with a house and camarin and sixteen or seventeen thousand plants of sugar-cane, to Pedro Carrillo and his wife Edilberta Juarez, for the sum of Four hundred pesos. He recites in such document that the land is that ceded to him by the pueblo of Mabalacat, and the instrument of cession is attached.

By wills dated February 7, 1889, and February 5, 1892, respectively, Pedro Carrillo and wife left their property in undivided parts to Maria Paz Juarez and Rosa Juarez.

November 7th, 1898, by instrument executed before the Vice President of Mabalacat, an official under the revolutionary government, Rosa Juarez sold the property now in question to Marcelo Tiglao, the applicant herein, for One thousand pesos. The title is guaranteed and the area is given as 743 hectares.

There is nothing in the records showing what became of the interest of Maria Paz Juarez in this property, though one of the witnesses testified upon the hearing that there had been a partition between the two sisters, in which partition this property corresponded to Rosa Juarez.

The following facts were brought out on the hearing:

Leon Laeson, 43 years of age, and the son of Rafael Laeson, testified that after securing the cession from the town of Mabalacat in 1873, his father cultivated certain portions of the land—the
12 clear parts—planting some sugar-cane and corn. In 1881, as already appears, the land was sold to Pedro Carrillo and wife.

Francisco de Guzman testified that he was "personero" for Carrillo on the land for two years, cultivating portions of it; that Carrillo then ceased to cultivate the land (1885) and that he, Guzman, continued in charge of the land for Carrillo for some years, to prevent people from cutting wood thereon. He said the land was used for pasture, but that while he was in charge of same people did not ask permission of him when they pastured their cattle on the land. He said the land had not been cultivated since 1885.

Valentin Morales said that the land belonged to Tiglao at present, but that he had not seen him in possession of it. It appears that Tiglao simply advised the witness and other persons that he had purchased the land. The declarations of Ludovico Narciso are to

the same effect, except that he states that in 1900 he asked permission of Tiglao to pasture some carabaos on the land.

Teodoro Locsin said that he cultivated portions of the land as lessee for ten years after it had passed to Carrillo, or until 1888. This declaration is in conflict with the testimony of Guzman who was in charge of the land as agent.

We find, therefore, that portions of the land were cultivated by Rafael Lacson between 1873 and 1881; that Carrillo cultivated certain parts until 1885; and that subsequent to that date the land was practically abandoned, there being no further cultivation and the public generally pasturing cattle thereon without interference.

13 No law has been cited to the Court, nor has any been discovered by it, authorizing municipal officers to convey public lands to private individuals, as was attempted by the pueblo of Mabalacat in this case. That they were without this authority is practically conceded by the attorney for the applicant, whose argument is directed principally to showing that title has vested in the applicant either by prescription of thirty years against the State, or by ordinary prescription based upon a "justo titulo" (rightful title) in Carrillo or his heirs.

Article 1959 of the Civil Code provides that ownership and other property rights in real property shall prescribe by "uninterrupted possession" of the same for thirty years. Article 1941 states that possession is interrupted naturally when, for any cause whatsoever, *it ceases for more than one year.* Even were the principle of law firmly established that title could be acquired against Crown lands of Spain by prescription, and that the running of such statute was not stopped by the vesting of title to Philippine public lands in the United States, the possession shown in this case is not such as to bring it within such prescription. This land has been virtually abandoned since 1885. Francisco de Guzman, who was in charge of the land on behalf of the owner, testified that such land was not cultivated subsequent to 1885, and that people pastured their cattle thereon without asking permission of him, and evidently, without interference upon his part.

It is contended, however, that by the conveyance from Rafael Lacson to Pedro Carrillo and wife, in 1881, the latter acquired a "justo titulo" (rightful title) which would start the period of ordinary prescription in their favor whatever deficiencies might have existed in Lacson's title.

14 The cession to Lacson by the municipality of Mabalacat was made upon the express condition that he reside in that town, without which his possession of the land would not be admitted. The instrument of cession does not confer upon Lacson the power to sell the land, but simply to devise it to his descendants. There is no evident purpose on the part of the municipality that the cession of the land should be accompanied by its actual occupation and cultivation, one of the reasons for the conveyance being that the land, as then situated, furnished a hiding place for ladrones, etc. Pedro Carillo bought the land knowing the conditions and limita-

tions imposed upon Lacson, the document of cession being attached to his conveyance.

For ordinary prescription good faith and a proper title are necessary. (Article 1940, Civil Code.) Even conceding that the Tagalog document for this property to Carrillo was a proper title within the meaning of Article 1952 of the Civil Code, the element of good faith is lacking. Good faith is defined by Article 1950 of the Civil Code as a belief, on the part of the possessor, that the person from whom he received the thing was the owner and could convey title. Carrillo could acquire no better title than that held by Lacson, as the source of Lacson's title was known to him with its conditions and limitations. It does not appear that Carrillo ever lived in the town of Mabalacat. That there was an element of distrust as to the sufficiency of such title is evidenced by the fact that the purchase price was but Four hundred pesos, an insignificant sum for the tract of land in question with the improvements enumerated in the conveyance.

Even under the theory, however, that Carrillo acquired the land under a proper title and in good faith, an uninterrupted possession of ten years was necessary to give him title by ordinary prescription. It is in evidence that he cultivated the land, at the most, four years (until 1885), when nothing further was done with it by him.

The same considerations apply to the claim that the title acquired by Rosa Juarez and her sister, under the wills of Carrillo and wife, was such as to start the prescriptive period in their favor. Possession, in order to vest title by prescription, must be "in the capacity of owner, public, peaceful and uninterrupted." (Article 1941, Civil Code.) The record shows no such acts of possession over the property in question by the persons named as would bring them within the terms of the law. The title conveyed to the applicant by Rosa Juarez in 1898 was not a fee title, even conceding that the instrument, as executed, was valid and binding; neither does the record bring the applicant within the provisions of Par. 6, Sec. 54, Act 926.

Registration of the land described in the application and accompanying plan is denied by the Court, without assessment of costs.

This decree, unless appealed from within thirty days, will become final.

(Signed)
[SEAL.]

D. R. WILLIAMS,
Associate Judge.

Manila, P. I., January 26, 1905.

A true copy.

J. R. WILSON,
Clerk of the Court.

The petitioner duly excepted to the decision of the Court of Land Registration.

On the 10th day of February, 1905, the petitioner prayed the Court of Land Registration for a rehearing of the case on the following grounds:

(*a.*) That the conclusion of facts as stated in the decision, are openly and manifestly against the weight of the evidence.

(*b.*) That said decision is contrary to the law.

The Court denied the petition and the petitioner duly excepted giving notice of his intention to present a Bill of exceptions.

And the petitioner within the term of ten days from the date of the notice given by the Court to file a Bill of exceptions, presents this, and prays that the same be approved and certified by the Court.

Manila, February 23rd, 1905.

PALMA, GERONA Y MERCADO,
By RAFAEL PALMA.

17 Court of Land Registration of the Philippine Islands, Manila.

Col. John A. Hull, Present.

SIR: The Hon. Judge of this Court would like to know if you have any objections to the bill of exceptions filed in case 495 by Attorneys Gerona, Palma and Mercado. This bill of exceptions is at present being heard and in case you have any objections to said bill of exceptions it would be convenient to have some one to represent you during the hearing, if not, kindly inform me of the fact.

Resp.

(Signed) M. GOITI,
Deputy Clerk.

3/4/05.

MY DEAR SIR: In reply to your inquiry would say that I did not care to introduce any objections to the "Bill" so did not attend this morning. Many thanks for your courtesy.

(Signed) J. A. HULL.

18 UNITED STATES OF AMERICA, *Philippine Islands:*

Court of Land Registration.

Case No. 495.

MARCELO TIGLAO, Applicant.

I hereby certify that the foregoing is the original bill of exceptions presented by the appellant for the due consideration of the appeal interposed by Messrs. Palma, Gerona and Mercado, attorneys for the applicant; it being proper to state that the time limit for the filing of the same was extended at the request of the appellant, within which extended period the said bill of exceptions was presented.

Manila, March 8th, 1905.

(Signed) S. DEL ROSARIO, *Judge.*

Filed in the Clerk's office of the Supreme Court of the Philippine Islands this 9 day of March, 1905, 11.45, a. m.

(Signed) J. E. BLANCO,
By H. D. McGEORGE, *Deputy.*

19 At the Town-Hall of the town of Mabalacat, this 13th day of July 1873, before me, the undersigned, Don Tomas Escuto, actual gobernadorcillo (president) of the said town, in the presence of duly qualified witnesses and the prominent men of the municipality being in session, appeared one D. Rafael Laczon, a resident of Angeles, and stated that having seen a land within this town situated in Labac and Mabatid and wishing to cultivate the same if there was no objection on the part of the said president and principales (prominent men), said land being an agricultural land bounded on the North by Litang river and the lands of a Christian chinese called Nicolas Cu Juco, on the South by Sapang Batung river, the Batiauan mountain and the Tacondo hill, on the East by a forest called Balanga and Mabatid hill, and on the West by Labac river; and the principales and the undersigned president being aware of the petition of said Rafael Laczon, agreed unanimously not to have any objection as to the cultivation of said land for the reason that it was an uncultivated land and for the further reason that it was used by the brigands as a refuge as well as by the carabao thieves and the Negritos, and in view thereof they give and yield the said land to the petitioner with the sole condition that he will make himself a resident of this town, otherwise not to permit him take possession of said land, to which condition the petitioner willingly agreed and registered himself as a resident of this town. A copy of this resolution shall be given to the said petitioner to be used by him as a title of ownership of said land, which title will give him right to transfer and convey the same to his heirs and assigns.

In witness whereof the present document is signed by the said president and the prominent men of the town and is O. K. by the Reverend Parish Priest of this town.

(Sgd.) TOMAS ESCUTO.
20 (Sgd.) REMIG. DE CASTRO.
(Sgd.) JOAQUIN FAJARDO.
(Sgd.) BERNARDO DISON.
(Sgd.) JUAN SAMPONG.

O. K.

FR. G. OMESACA. [RUBRICATED.]

(Sgd.) HIPTO. GOMEZ.
(Sgd.) (Illegible signature.)
(Sgd.) CELEDONIO DIZON.
(Sgd.) FERMIN TUAZON.
(Sgd.) APOLONIO CACNIO.
(Sgd.) GRACIANO TIGLAO.
(Sgd.) MARIANO LANZA.
(Sgd.) (Illegible signature.)
(Sgd.) MATEO LACSON.
(Sgd.) FRUTO DIZON.
(Sgd.) JOSÉ (Surname illegible).
(Sgd.) SATNO. SAMPSON.
(Sgd.) FELIPE DY TIANGCO.
(Sgd.) MARIANO MAGLALANG.
(Sgd.) (Illegible signature.)
(Sgd.) (Illegible signature.)

21 I, the undersigned, Don Rafael Laczon, native of the town of Angeles of this province of Pampanga, represent and state that my sugar land situated in the place called Labac and Mabatid within the limits of Mabalacat bounded on the north by Litang river and the lands of a Christian chinaman named Nicolas Cu-Ju-co, on the South by Sapang-Batu river, the Batiauan mountain and the Tacondo hill, on the East by forest called Balanga and Mabatid hill and on the West by Labac river, is a land which was given and yielded to me by the municipality of Mabalacat on the 13th day of July 1873, as may be seen in the an-exed document composed of five sheets, which is a part hereof, and which land I do hereby sell forever to the spouses Don Pedro Carrillo and Doña Edilverta Juares together with the house and warehouse built on the place where I live and sixteen or seventeen thousand sugar canes, all for the price of Four Hundred Pesos which sum I confess to have received on this date. And in testimony of the consum-ation of this sale I tra-smit to them the possession of those properties, and execute the present document in the Tagalog language which I sign in the presence of witnesses Don Mateo Pineda, Vicente Gonzales and Dominga Sunga in this town of Calumpit, this sixth day of May 1881.

RAFAEL LACSON.
VICENTE GONZALES.
DOMINGO SUNGA.

22 Number Twenty-three.

In the name of God Al/mighty:—I, Don Pedro Carrillo y Flores, native and resident of the town of Calumpit, province of Bulacan, and residing temporarily in this capital of Manila, fifty-one years of age, married, legitimate son of Don Fausto Carrillo and Doña Maria Flores, both deceased, Catholic, Apostolic and Roman Christian, attorney-at-law, being sick but in perfect use of my senses and mental faculties; believing and admitting the ineffable Mistery of the Most Holy Trinity and that of the Immaculate Conception of Holy Virgin Mary and all others admitted by the Holy Mother Catholic, Apostolic and Roman Church, the faith of which I have always professed and do now profess and will profess until I die, and wishing to die with a testamentary will made, I now implore for this supreme moment the grace of God, and by these presents I have this will made and executed as follows:—

First.—I commend my soul to God, Our Lord, and command my body to the ground, which body once a corpse I command it be inter-ed in a Christian way.—

Second.—I donate one peso for each of the obligatory pious donations.—

23 Third.—I declare to be married legitimately and in *facie ecclesiæ* to Doña Edilberta Juarez, native of Santa Cruz District, with whom I have had no issue.—

Fourth.—I declare that my said wife, Doña Edilberta, brought into our marriage two thousand pesos in cash and all jewelry she now has and possesses; that I on my part brought into our marriage certain land inherited from my deceased parents, situated in the places named Cascas and Tiquio of my said town of Calumpit, and in the place named Danga of the town of Macabebe, province of Pampanga, in which I have an iron sugar mill.—

Fifth.—I declare that all other real property outside of the above mentioned in the preceding clauses and which are set forth in their corresponding documents, are property acquired during marriage, including the house and lot wherein we live in said town of Calumpit, and a carriage, a team of horses and all the furniture.

Sixth.—I appoint my fiduciary heiress of all my property, rights and shares, the said wife of mine Doña Edilberta Juarez, who will dispose of them according to reserved instructions which I will give her.—

Seventh.—It is my will that the sum of one hundred pesos be distributed as alms to the beggars, and that one hundred masses be celebrated in behalf of my soul at the rate of one peso a mass.

Eighth.—I appoint the said wife of mine Doña Edilberta Juarez my testamentary executrix, without requiring her to give any bond and extend in her behalf the legal term for the exercise of
24 said charge as long as she deems it convenient.—

Ninth.—It is my will that my said wife and executrix collect any and all credits corresponding me whatever their motive or concept be, and that she pay any and all debts I have that were legitimately and justly contracted.—

Tenth.—I repeal and annul any other testament or will I have made heretofore either verbally or in writing or in any other form, and I only wish that the present testament and will be valid as my last and deliberate will.—

So stated and executed the testator Don Pedro Carrillo y Flores, exhibiting his certificate of registration, sixth class, number twenty five t-ousand five hundred and five, issued on July twentysixth of last year by the Administrator of Public Funds of said province of Bulacan, before me the undersigned Don José Engracio Monroy y Torres, public Court Clerk of the Court of First Instance of the District of Quiapo, who constituted himself at the request of the testator in the Parish Convent of this district of Quiapo in which the testator is found and in the presence of the proper witnesses called and requested to be there accordingly, named Don José Arevalo, Don Valentin Isidro and Don Pedro Jacobo, prominent men and residents of said district. Said witnesses were told that they have the right to read by themselves this will, and by unanimous agreement of all of them, I proceed to the reading of same in full, the
25 contents of which they ratify as being the true statements and will of the said testator, and which they signed together with the testator in the said Parish Convent this seventh day of February, 1889. Of all of which, as well as of my acquaintance with the testator, and that the latter is in perfect use of his mental powers,

judging from his clear way of speaking and thinking, I hereby attest.—Crossed out—y en todo—void. Amended—su—valid.—

PEDRO CARRILLO.
JOSÉ ARÉVALO.
VALENTIN ISIDRO.
PEDRO JACOBO.

Before me—
J. ENGCIO. MONROY.

NOTE.—On this eighth day of February 1889 at the request of the above testator, Don Pedro Carrilo y Flores, I issued a first copy in a stamped paper of first class numbered one hundred sixty seven and another stamped paper of tenth class numbered three hundred seventy six thousand four hundred and sixty six of the present term of two years.

I attest.

MONROY.

It is a copy of its original which with the above number is filed in the protocol of public documents of the former Clerk of Court in this City, Don José Engracio Monroy y Torres, corresponding to year one thousand eight hundred eighty nine and which is filed in the general archive of protocols, where I Don Genaro Heredia, Notary Public, am constituted at the request of the said Francisco Lintag, to whom I hereby issue these presents in *a* stamped sheets of paper of the fifth and tenth class-, good for the actual
26 term of two years, and which I now stamp, sign and rubricate in Manila this seventeenth day of December nineteen hundred and two; of all of which I hereby attest.—Cross out—m—valid.

(Sgd.) GENARO HEREDIA.

Notary Public Stamp and Seal.

27 Number 30.

In Manila this 5th day of February 1892.

Before me, D. José Engracio Monroy y Torres, Notary Public, and one of the members of the Association of Notaries in and for this City of Manila, residing in the same, being present at five o'clock in the evening of this date, at the house number 26, situated on Calle Bilbao, District of Tondo, as requested, appears Doña Edilberta Juarez Celis, 56 years of age, a widow, and a resident of the town of Bulacan, legitimate daughter of Don Laureano y Doña Francisca, both deceased, with certificate of Registration of tenth class, number 551888, issued on June 2nd. last by the "Cabeceria" number 45 of the town of Bulacan, and though suffering from sickness she enjoys at present of her sound intel-ectual mind and able to speak, and it appearing that she has a full right*h* to exc*e*ute a will, and after invoking the name of God Almight*h*y and making a solemn declaration of her faith to the Catholic, Apostolic and Roman Church, she

orders and directs the undersigned Notary Public in the presence of the witnesses, who will be mentioned hereafter to make and ex-cute her last will and testament in the following manner.

First—She leaves at the discretion of her ex-cutors the solemnity of her interment and offering of prayers for her soul.

Second—She directs that the sum of one peso be given, as a donation to the "Mandas Pias forzosas" funds.

Third—She declares to have been married twice; to Don Claudio Antonio and to Don Pedro Carrillo, having had no issue in either one of them.

Fourth—She declares that at the time of contracting marriage with Don Pedro Carrillo, she brought into the conyugal partnership besides all the property mentioned in the contract of marriage,
28 a piece of land situated in Calle Lacoste, Santa Cruz District, which she acquired by purchase from Don Eulalio Medel bearing number 15 of the Government.

Fifth—She declares that her husband Don Pedro Carrillo also brought into the conjugal partnership property consisting of lands, situated in the places called Cascas and Tiquio of the town of Calumpit, and in the place called Danga in the town of Macabebe, which property has been administered by her as a fiduciary heiress since the death of her husband and because she was instructed before his death to take charge of same.

Sixth—She declares that during her marriage with Don Pedro Carrillo, they acquired the following described property as belonging to their conyugal partnership.

Cattle.

Six cows now in the possession of Valeriano de Jesús a resident of Bacolod, Province of Pampanga.

Three horses also in the possession of said Valeriano.

Two carabaos, now in the possession of her tenant, named Aguedo, a resident of Danga of the same Province.

Ten carabaos in the possession of Severino Torres a resident of Concepcion de Magao, Province of Tarlac.

Personal Property.

Some house furniture, the value of w-ich cannot be determined, some kept in Calumpit, Province of Bulacan, and some in this City.

Two iron mills, animal power, one of which is in Danga Province of La Pampanga, valued at 900 pesos and the other in Culiat, valued at 500 pesos.

29 Real Property.

One parcel of land, situated in the place called Casugan, in Macabebe, Province of Pampanga, valued at 500 pesos.

Four parcels of land situated at Abulot, in the same town of Macabebe, valued at 2254 pesos.

One parcel of land at Tabanga in the same town, valued at 170 pesos.

Three parcels of land at the place called Malaulin Maiza in the same town, valued at 1330 pesos.

One parcel of land at Santa Cruz, in the same town, valued at 100 pesos.

One parcel of land at Macabala, Province of Pampanga, valued at 400 pesos.

One parcel of land at Telascan in the town of Macabebe, valued at 552 pesos.

Four parcels of land in the barrio of Magao and other places in the town of Concepcion, Province of Tarlac, valued at 1172 pesos.

One parcel of land at Magasaua, in the town of San Miguel de Masantol, Province of Pampanga, valued at 2000 pesos.

One parcel of land at Santo Rosario or Pungo in the said town of Calumpit, Province of Bulacan, valued at 110 pesos.

One parcel of land at Sauli in the same town of Calumpit, valued at 70 pesos.

One parcel of land at Buguion, in the same town of Calumpit, valued at 328 pesos.

One parcel of land in the town of Calumpit, valued at 10 pesos.

One parcel of land in the place called Francés, in said town of Calumpit, valued at 40 pesos.

One parcel of land at Caidla, in the same town of Calumpit,
30 valued at 12 pesos.

One parcel of land in the place called Caningan in the said town of Calumpit, valued at 43 pesos.

A house and lot at Balungao in the same town of Calumpit valued at 300 y 172 pesos, respectively.

One parcel of land at the place called Sucol, in the town of Calumpit, valued at 805 pesos.

One parcel of land, also at Sucol valued at 230 pesos.

One parcel of land at Bagbag, in said town of Calumpit, valued at 300 pesos.

A house of strong materials, with "nipa" roof, built on one of the lands situated in said place called Sucol valued at **3000 pesos.**

Credits.

Credits against several persons as per receipts kept amounting to 2182 pesos.

Seventh—She declares that after the death of her husband Don Pedro Carrillo, she acquired a parcel of land, situated at Maito, in the town of Calumpit.

Eighth—She declares that by the will of her husband Don Pedro Carrillo, executed before the undersigned Notary Public on the 7th day of February 1889, she was appointed as a fiduciary heir-s of all his property, rigths and shares, the delivery of w-ich has not yet been made to the *cestui que trust* heirs, viz: her nieces Maria Paz Juarez and Rosa Juarez, daugthers of her deceased brother Severino Juarez, who are instituted as such *cestui que trust* heirs, due to the many and good services rendered to him since their chil-hood. And
in compliance with the desire of her deceased husband Don
31 Pedro Carrillo, set forth in the same Will, she declares and confesses that the heirs *cestui que trust* of said deceased are

the above mentioned nieces, to whom, she therefore, makes delivery of the inheritance entrusted to her by her deceased husband, said property consisting of the ones mentioned in the 5th clause and one half of those mentioned in the sixth clause as his share of the conyugal partnership, with the exception of the furniture and the house built on one of the pieces of property in Sucol, in regard to which her said husband made the provision mentioned hereafter.

Ninth—She declares that she is the owner of several pieces of jewelry set with diamonds, which she has pawned for the sum of one thousand pesos in the "Monte de Piedad" to satisfy the debts left by by her husband Don Pedro Carrillo, on his death.

Tenth—She declares that in a suit brougth by her in the Court of First Instance of the Province of Pampanga, judgment has been rendered to the effect that certain lands situated at Malaolo, in the town of San Miguel, of the same province, be delivered to her. She wishes her executors to pray for an execution of said judgment and, after taking possession of such lands, the same to be divided among her heirs.

Eleventh—It is her desire, in compliance with the directions given by her husband, that for a period of six years from the time of her death, the proceeds obtained from the fruits and rents of the lands situated in Ambulot, Tabanga and Danga be invested annually, in the celebration of Masses, in the following manner; The income derived from the land situated at Ambulot, to be paid for prayers offered for her soul; that, from the land at Tabagan, for prayers offered for the soul of her husband Don Pedro Carrillo; and the income derived from the land at Danga for prayers offered for
32 the Blessed Souls in the Purgatory.

Twelfth—She leaves as a legacy to her niece Maria Paz Juarez the personal property above described. Also the jewelry pawned in the Monte de Piedad and the land situated on Calle Lacoste with the small houses built on the same. She likewise leaves to her said niece the house on one of the lands situated at Sucol, in the town of Calumpit, for such is the desire of her husband Pedro Carrillo, communicated to her as fiduciary heir, as well as her own.

Thirteenth—She appoints the said Maria Paz Juarez and Rosa Juarez as the sole and universal heirs, share and share alike, of all her property, rigths and shares, after deducting thereform the legacies and donations mentioned above.

Fourteenth—She nominates her nieces Maria Paz and Rosa Juarez as her universal executrixes, so that they may, either jointly or separately, execute and comply with the directions contained in this Will, relieving them from furnishing any bond, and extending the time required by law, until such a period as they may deem necessary.

Fifteenth—In conformity with the powers granted by law, she prohibits that there be any judicial intervention in her estate and whatever proceedings which might be had in regard thereto, including the partition and adjudication of the property, be conducted outside of Courts.

Sixteenth—She revokes and annuls any other Will and testament

which she may have executed heretofore, and it is her wish that the present document be the only one valid, kept and executed in all its parts.

The above statements were made by Edilberta Juarez y Celis, who executed this document, before me, the undersigned Notary Public, in the presence of the witnesses Juan Aramburo y Lustre,
33 a wate-maker, Jacinto de Sales y Tolentino a taylor, and Cecilio Ablasa y Gomez a laborer, who know the testatrix, all of them being of legal age, and residents of the same place. And the undersigned having read in a loud voice the contents of this writting, the textatrix expressed her consent and ratified to the same. Every person present approved the interlined words: "habla expedita" "Juarez" "Juarez" and the erased words "C. pueblo. uno. de los terrenos en. expre. seis. y ella lo" and signed this document with the exception of the testatrix, who, feeling very weak stated that she could not do it and requested Juan Aramburu y Lustre to sign in her name which was done at the same time. To all of which, the contents of this instrument, the fact of knowing personally the testatrix and the witnesses, and that, on the execution of the same the provisions of Section 5, chapter 1, title 3, book 3 of the Civil Code had been complied with, I do hereby certify.

For the testatrix:—

JUAN ARAMBULO Y LUSTRE.
JUAN ARAMBULO.
JACITO DE SALES.
CECILIO ABLASA.
(Signed) J. ENGRACIO MONROY.

There are a rubric and Notary seal.

NOTE.—In Manila this 20th of February 1892 I have issued to Rosa Juarez one of the heirs of Doña Edilberta Juarez y Celis, appointed in this Will, the first copy of the same, in a stamped sheet of paper of the first class and four sheets of the tenth class, numbers 2542; 470,665; 420666; 420,667; 420,668 of the present term of two years, having proved to me the death of the testatrix by means of the certificate of death.

I attest—

MONROY.

The foregoing is a copy of the original document registered in the protocol book for the year 1892 of Don José Engracio Monroy
34 y Torres, who was formerly a Notary Public in and for this City of Manila, which is to be found in the general Archives of Protocols of this City where I, Genaro Heredia, a Notary Public, am present at this time, at the request of D. Francisco Lantag, to whom I issue this copy in a stamped sheet of paper of the first class and four sheets of the tenth class, valid for the present year. Due note has been made of the taking of this copy on the margin of its original, which I sign, rubricate and seal in Manila this 18th day of December 1892.

I attest—

(Signed) GENARO HEREDIA. [SEAL.]

35 At the town-hall (Presidencia) of the town of Mabalacat, this seventh day of November, eighteen hundred ninety eight: Before me, the undersigned Vice-President of said town and municipality, D. Mateo de Castro, in the absence of the President, and being the provisional representative of the public faith (fé publica) thereof by virtue of a Decree of the Revolutionary Government dated September twenty-fourth of the present year, published on October the second last in "El Heraldo de la Revolución," and before the witnesses mentioned below, appear, from one part, Doña Rosa Juarez Medina, married, of legal age, merchant, resident of Tondo district of the city of Manila, with the intervention and attendance of her husband, Don Francisco Lintag Rivera, and from the other part, Don Marcelo Tiglao y Dison, of legal age, farmer, resident of this town of Mabalacat, married to Doña Feliciana Mendiola y Dison, and both parties being with legal capacity to execute this deed of sale, freely and expontaneously state:

First.—That Doña Rosa Juarez Medina is the owner of a rural property, a part of which is a sugar land and another part of same being used for pasture of cattle, of seven hundred forty three hectares, twenty-four areas and seventy-five centiareas, more or less, situated in the place called Labac and Mabatid of the Barrio of Dolores within the jurisdiction of this town of Mabalacat, bounded according to an old private document which she exhibits now,
36 as follows: On the North by Litang River and the lands owned by a Christian Chinaman named Nicolas Cu-juco, on the South by Sapang-batu River Mounts Batiauan and Tacondo hill, on the East by a forest called Balanga and the Mabatid hill and on the West by Labac River, being bounded at present as follows: on the North by Litang River and lands owned by Don Mariano Pamintuan, on the South by Sapang-batu River, the Batiauan Mountain and the Tacondo hill and the lands of Don Pedro Pamintuan, on the East by the lands of Morales brothers and the Mabatid Hill, and on the West by Labe River.—

Second.—That said property was acquired by said Doña Rosa Juarez Medina by inheritance by virtue of a testament executed by her deceased uncles Don Pedro Carrillo y Flores dated February the seventh of the year one thousand eight hundred and eighty nine, and Doña Edilberta Juarez y Celis, dated February the fifth of the year one thousand eight hundred and ninety two, both wills having been executed before Notary Public Don José Engracio Monroy y Torres, the said property being free of all encumbrances.—

Third.—And being willing to sell the same, she hereby sells the same to Don Marcelo Tiglao y Dison, under an absolute and real deed of sale, for the price of One Thousand pesos, agreed upon, which she receives at this moment from the buyer in good silver coins, in my presence and in the presence of the Revenue
37 Agent, Don Florencio Ramos in the absence of the Delegate of Justice, Don Felipe Miranda, as an instrumental witness.—

Fourth.—The said Doña Rosa Juarez Medina does hereby transmit and transfer her ownership to the said property to the said buyer,

Don Marcelo Tiglao y Dizon, his heirs and assigns, together with every thing belonging to the said property, as well as with any personal or real rights she might have thereon, so as to make him the sole owner thereof and to enjoy the ownership of same the same as when she was enjoying the same heretofore, the present deed being with covenants of warranty.—

Fifth.—Don Marcelo Tiglao y Dizon accepts any and all the terms of this deed and receives in this very moment the old deed or document of the said property as a sign of having taken possession of same, and the real title is not delivered to him because it was burnt when the insurgents entered and burnt the town of Calumpit including the house of the seller.—

So they stated and declared, and now they sign the present deed in the presence of the instrumental witnesses, Don Apolonio Ramos and Don Tamás Garcia, of legal age, both residents of this town, they being aware of the fact that they have right to read the whole document by themselves; of all of which, I hereby attest.—

(Sgd.)	ROSA JUAREZ.	[RUBRICATED.]
	MARCELO TIGLAO.	[RUBRICATED.]
	FRANCISCO LINTAG.	[RUBRICATED.]
	TOMAS GARCIA.	[RUBRICATED.]
	APOLONIO RAMOS.	[RUBRICATED.]
	FLORENCIO RAMOS.	[RUBRICATED.]
38	MATEO DE CASTRO.	[RUBRICATED.]

It is a first copy of its original which is filed in the protocol of this year to which I refer.

And at the request of Don Marcelo Tiglao y Dizon, I have issued these presents in Bacolod, capital of the Province of Pampanga, this eighth day of November in the year of A. D. One Thousand eight hundred and ninety-eight. Crossed out —r—Valid.

The Counsellor of Justice.

(Sgd.) ROMAN VALDES ANGELES.

(Official Seal.)

39 UNITED STATES OF AMERICA, *Philippine Islands:*

Court of Land Registration.

At the session of the Court held in the Municipality of Angeles, Pampanga Province, Hon. D. R. Williams, Associate Judge, presiding, on the morning of the 9th day of November, 1904, the following case was called for hearing:

Expediente No. 495.

In the Matter of MARCELO TIGLAO, Applicant.

Appearances.

The applicant accompanied by his counsel, Sr., Rafael Palma; and in opposition to the petition, the Assistant Fiscal, Sr. Ramon Avancena, representing the Government.

EVIDENCE PRESENTED BY THE APPLICANT.

Testimony of the Witness Leon Jacson,

Who was duly sworn and stated that he was 43 years of age, a coachman by profession and a resident of Angeles, Pampanga.

Questions by Mr. PALMA:

Q. What is your father's name?
A. Rafael Lacson.
Q. Do you know your father's signature?
A. Yes, sir.
Q. I will show you this document and ask you to state whether the signature of Rafael Lacson appearing here is your father's signature? (Exhibit "D.")
40 A. Yes, sir.
Q. Did you ever know one Vicente Gonzalez, and one Domingo Sunga?
A. Yes, sir?
Q. Do you know whether those two persons are still living, or are they dead?
A. I do not know whether they are living or dead, because they are not residents of the town.
Q. Do you know whether your father is dead or is he still living?
A. He is dead.
Q. Do you know whether your father, Rafael Lacson, owned any land in the Municipality of Mabalacat, when he was alive?

AVANCENA: I object to this question as being irrelevant, and ask that counsel for the applicant be required to state what he expects to prove by this witness, in order to avoid my having to object to every question.

PALMA: I am going to prove Rafael Lacson's possession of this land.

AVANCENA: I object to the admission of this witness' testimony in regard to the possession of the land, and ask the Court to consider as objected to all of the questions put to the witness in regard to the possession, as well as his answers; for we hold that possession of land does not give title to the same.

The COURT: The questions are admitted.

AVANCENA: Exception.

A. Yes, sir.
41 Q. Showing you this map, Exhibit "A" in this cause, I will ask you to state whether it is a graphical description of the land which your father was in possession of in the jurisdiction of Mabalacat?
A. Yes, sir.
Q. When was the first time you saw that land?
A. From the age of 12 years when it was in my father's possession, and when he was given possession of it by the town of Mabalacat.

Q. Who was it that was 12 years of age?
A. Myself.
Q. And from that time until your father's death was he in possession of that land?
A. No, sir; until his death, no.
Q. How long a time was your father in possession of that land?
A. About eight years.
Q. During that time did your father cultivate that land or obtain any advantage from it in any way?
A. Yes, he cultivated it.
Q. Did he cultivate all of the land which is shown on this map, or a part of the land only?
A. No sir, he used to pick out the best parts of the land.
Q. Do you know what your father did with the land at the end of the eight years?
A. Yes, he sold it to Don Pedro Carrillo.

Questions by Mr. AVANCENA:

Q. Can you state exactly what part of the land your father cultivated, and what part he did not cultivate?
A. Yes, sir.
42 Q. Point them out on the map.
A. At first the land was covered with a forest on the part indicated by the letter A, and my father cultivated all that part of the land lying between the three for-sts shown on the map; afterward he continued cultivating all of the land shown at B, and later all that part of it shown at C was also cultivated. The lower part of the land was not cultivated on account of its being nothing but rocks and sand.
Q. What was planted on the higher parts of the land which you have pointed out on the map?
A. Sugar cane and corn; in the month of May, corn, and in December and January, sugar cane.
Q. Was all that part of the land cultivated every year?
A. No sir, because it was too large.
Q. I am referring to that part which you state was cultivated?
A. The same land was not cultivated every year; one part of it was cultivated one year, and the other part another year.
Q. You have never left the place where you have lived since you were 12 years of age?
A. No, sir.
Q. Have you been over all of the land shown on this map?
A. Yes, sir; and even on a dark /ight with no moon I could point out the boundaries of the land.
Q. Why did you go over all the boundaries of the land, formerly?
A. In order to know the boundaries of the land.
43 Q. Who showed you the boundaries of that land?
A. After my father took possession he showed them to me.
Q. Did your father take possession of all the land shown by this plan?
A. Yes, sir.

Q. In what way did your father take possession of the land?
A. The town of Mabalacat gave it to him.
Q. After your father took possession of the land what did he do with that part that was not cultivated?
A. He used it to pasture carabaos and cows.
Q. Cattle of his own?
A. Belonging to the neighbors; to his townsmen, and to others who were not his townsmen.
Q. So that from the time your father took possession of the land any of his neighbors could send their animals there to pasture?
A. Yes they could provided they had a herder who was a resident of the same plantation.
Q. And if the herder was not a resident of the plantation what would your father do with cattle grazing at that place?
A. No one who was not a resident of the same plantation could be a herder there on account of fear of the negros (negritos).
Q. During that time was there ever a herder there who was not a resident of the plantation?
A. No sir, whenever a herder went there who was not a resident he would have to be accompanied by some one belonging to the plantation.

44 By Mr. PALMA:

Q. What do you mean by plantation?
A. This land.

AVANCENA: That is all.

Q. These herders, were they employees of your father's or did they ask permission of him to go there?
A. They were his tenants.
The COURT: When your father took possession of this land were there any marks or monuments indicating the boundaries of the same?
A. The marks used on the different farms were the hills, creeks and forests; and there was a large tree, which has since been cut down, a tree called "Calangatuan" between this land and the lands belonging to Mr. Sanchez.
The COURT: You have stated that you could follow the boundaries of the land even at night. It appears here that the boundaries are considerably overgrown with brush, now how could you follow the boundaries of this land if they were indicated only by forests and hills?
A. By following along the edge of the forests and hills.
Q. Do you know how the boundaries of this land were fixed the first time, between your father and the town of Mabalacat?
A. Yes, sir.
Q. How?
A. My father showed them to me, and at this place there is a small hill, and at the side of same ("Tacondo") a small hill, and below that several level places and a small forest also; but when the town gave my father possession of the land they measured it with a small rope.

45 *Testimony of the Witness Francisco De Guzman,*

Who was duly sworn and stated that he was 46 years of age, married, farmer by occupation and a resident of the town of Angeles, Pampanga Province.

Examined by Mr. PALMA:

Q. Do you know Marcelo Tiglao?

A. Yes, sir.

Q. Do you know whether Marcelo Tiglao had any land in the jurisdiction of the town of Mabalacat, in the suburb called Dolores, in the place known as "Sabat" and "Mabatid?

A. Yes, sir.

Q. When was the first time you saw the land to which you refer?

A. In the year 1885.

Q. And in that year in whose possession was the land?

A. Don Pedro Carrillo.

Q. How did you happen to know that land which at that time was in Don Pedro Carrillo's possession?

A. Because I was an employee of Don Pedro Carrillo.

Q. Were you ever on that land?

A. Yes, sir; I am the one who cultivated it as I was an employee of Don Pedro Carrillo.

Q. My question is were you ever on that land?

A. Yes, sir.

Q. Do you know who had possession of the land before Don Pedro Carrillo; did you know that land before that time?

A. Yes, I knew the land before that.

Q. Who was in possession of the land before Don Pedro Carrillo?

A. Don Rafael Lacson.

46 Q. How long were you on that land, representing Don Pedro Carrillo, in charge of it for him?

A. As personero of Don Pedro Carrillo I was there two years, after that date as Mr. Carrillo ceased cultivating the land I was no longer his personero, but I continued in charge of the land to take care of it, and as I was also in charge of Mr. Michel's plantation, I was there to prevent other people from cutting timber.

Q. For how long a time did you continue in charge of the land for Don Pedro Carrillo, looking after it?

A. Some ten years.

Q. When you took charge of the land was it already under cultivation?

A. Yes, sir.

Q. What branch of agriculture was the land devoted to, and what other uses were made of it?

A. Sugar cane and corn.

Q. Was the whole of the land cultivated, or only a part of it?

A. Part of it only, and even from that part different places would be selected for cultivation.

Q. And the part of the land that was not cultivated, what was it used for?

A. For pasturage.

Q. In order to pasture animals there would the people notify the owner or the man in charge of that land?

A. When I was placed in charge of the plantation, they no longer notified me.

Q. Can you state what properties adjoin that land, on all sides?

47 A. I can not state what the boundaries are, but the properties adjoining, yes.

Q. Whose properties adjoin the land to which you refer?

A. On the side towards the river Mr. Michel's.

Q. What is the name of that river?

A. A creek called "Labac."

Q. Continuing on that side who is the adjoining property owner?

A. Towards the roadway Mr. Samson; between Mr. Michel's and Mr. Samson's land Mr. Pamintuan's.

Questions by Mr. AVANCEÑA:

Q. Have you been over all the boundaries of that land?

A. Yes, sir; but I could not point out the exact boundaries.

Q. When you traversed that land which way did you go?

A. We passed by "Mabatid," Pamintuan's, Samson's, Sanchez's then by the forest adjoining Sanchez's place, then to the small hill "Tacondo" belonging to one Carrillo, then by Sapang-batu and we wound up at "Litang."

Q. When you went over that land you did so by crossing from one side to the other by the straightest road?

A. There are really no roads there; a companion who was with me pointed out the places at certain distances.

Q. And you could see the places which he pointed out to you?

A. Yes, sir.

Q. Could you see what the distances were from where you were to the places pointed out to you?

A. Yes, because we were travelling not very far from the places which my companion pointed out to me.

Q. Was all the land around there level?

48 A. No, sir; there are low places and gullies.

Q. Any trees there?

A. Yes, small trees.

Q. Was there any thick brush?

A. Yes, in the gullies there was a great deal.

Q. Then how could you judge the distances from where you would be to the points which were indicated to you as the boundaries of the land?

A. Whenever there was much brush we would go to the other side to see the boundary.

Q. The boundaries which you have mentioned here, are they the only ones which you have seen?

A. I do not know any others but those.

Q. The points which you have mentioned here and which you state you have examined, are they the only ones you examined?

A. They are the only ones that I know, the only ones we examined.

Q. Then according to this the points which you have mentioned in your testimony are all and the only boundaries of the land?

A. They are the only ones that I know.

Q. Could you describe or sketch the shape of the land on a piece of paper?

A. Yes, sir.

Q. Will you do it here (handing the witness a piece of paper).

A. (The witness made a sketch on a piece of paper which is attached to this transcript.)

Q. On this sketch which you have made where is Mr. Michel's land?

49 A. Here it is (pointing it out on the sketch attached to the transcript of this declaration).

Q. Do you know what the distance is between the points A and B on this sketch you have drawn?

A. I know the total distance but not the measurements there.

Q. In fathoms?

A. There are nearly two thousand fathoms or more, according to my calculations.

Q. Do you know what the distance is between the half-way point between A and B and the point E on this sketch which you made?

A. Yes, sir.

Q. State what the distance is in fathoms?

A. About one thousand fathoms, but I am not positive of this.

Q. Do you know what portion of the land was cultivated?

A. Yes, sir.

Q. Can you point it out on this sketch you have made?

A. Yes, sir.

Q. Please point it out?

A. (Witness indicates.)

Q. Do you know whether that part that was cultivated was so cultivated every year?

A. Not every year, for one part of it would be cultivated one year and the other part another year.

Q. It was planted from what year to what year?

A. I cannot state what years, but I believe in '84 or '85, as I was there only two years.

Q. So you don't know that the land was cultivated except those two years?

50 A. Yes, sir; I know that before those two years the land was already under cultivation.

Q. How do you know that?

A. Because on account of that I went there as personero.

Q. You saw it?

A. Yes, sir.

Q. Have you been on that cultivated land?

A. Yes, sir, because at that time I was a tenant of Mr. Michel's,

and to go to Mr. Michel's plantation I had to pass through this other plantation.

Q. And when you went by there you had to go over all the cultivated land?

A. No, I just passed through there.

Q. Then all you saw was what you noticed in passing through there?

A. Yes, sir; all I saw was sugar cane and then the land ready for planting.

Q. When you were no longer in charge of the place under Mr. Carrillo do you know whether they continued planting the land?

A. From that time they stopped working, and a proof of the fact that they stopped working at that time is that the iron mill, used at that time when I was an employee is still in his possession.

Q. Since that time up to the present the land has not been worked?

A. No sir.

Q. When did they stop working there?

A. Since '85 up to the present date no one has worked on that land.

51 By Mr. PALMA:

Q. State whether the land is being cultivated at the present time or not?

A. No, sir.

Q. Do you know what use has been made of the land since they ceased cultivating it in 85?

A. At the end of the ten years during which I was in charge of the land I heard that it had been sold to Don Marcelo Tiglao.

Q. What I ask you is whether you know what use Don Pedro Carrillo made of the land after the year '85?

A. None.

By Mr. AVANCENA:

Q. When you were in charge of the land for Mr. Carrillo how long a time had the land been cultivated before that that is to say after '85?

A. I do not know how many years, but it was under cultivation since a long time before that.

By the COURT:

Q. In what year did you go there as an employee of Mr. Carrillo's?

A. In '84 and '85.

Q. And you cultivated the land two years for Mr. Carrillo?

A. Yes, sir.

Q. Then the land must have been cultivated after '85?

A. No, sir; after '85 there was nobody there.

Testimony of the Witness Francisco Lintag,

Who was duly sworn and stated that he was 54 years of age, widower, a practicing pharmacist, and resident of Malolos, Province of Bulacan:

52 Questions by Mr. PALMA:

Q. Do you know the applicant in this case, Marcelo Tiglao?
A. Yes, sir.
Q. How long have you known Marcelo Tiglao?
A. Since the time the sale was made by my wife.
Q. What is your wife's name?
A. Rosa Juarez.
Q. Did your wife sell to Marcelo Tiglao the land which is the subject of this application?
A. Yes, sir, my wife sold it with my consent, as she was the owner of it.
Q. I will show you this document marked Exhibit "G" and ask you to state whether it is the instrument of sale executed by you and your wife in favor of Marcelo Tiglao?
A. (After reading the document carefully:) Yes, sir.
Q. Is what is stated in that document true?
A. Yes, sir.
Q. Do you know how your wife Rosa Juarez happened to be the owner of that land?
A. Inherited it from her uncle Don Pedro Carrillo.
Q. Do you know whether your wife did anything or took possession of that land?
A. Yes, sir.

By Mr. AVANCENA:

Q. What is the area of that land?
A. Seven hundred and odd hectareas (hectares).
Q. How do you — that is the area of it?
A. According to what my wife said, because I do not know what the measurements are, and according to what the purchaser stated.
53 Q. Is that the only reason why you know that that is the area of the land?
A. Yes, sir, that is the only reason.
Q. According to this then you do not know of your own knowledge what the area of the land is?
A. Seven hundred and some odd, I do not remember.
Q. Do you know the boundary lines of the land?
A. No sir, because I am not the owner of the property.
Q. When did your wife take possession of the land?
A. Before '98.
Q. Of what did the taking of possession of the land consist?
A. Her sister delivered to her the title deeds, and she sent a man to look after the land.

Q. After taking possession what did your wife do with the land?
A. The man in charge continued to cultivate the land and even now the mill is still in existence there, and the place is still under the care of the man who was in charge up to the time of the sale.
Q. Was all of the land cultivated by your wife?
A. No, sir.
Q. A large part of it or only a small part of it?
A. A small part of it. The man in charge knows what parts of the land have been under cultivation.
Q. You do not know what parts of it were cultivated?
A. No, sir, but my wife used to know.

By the COURT:

Q. Who was the man in charge?
A. Francisco de Guzman.
54 Q. Did Maria Paz Juarez have any share in the plantation as a co-heir of your wife?
A. Yes, sir; but there was a verbal agreement made between the two sisters.

Testimony of the Witness Valentin Morales,

Who was duly sworn and stated that he was 35 years of age, married, farmer by occupation, and a resident of the town of Mabalacat, Province of Pampanga.

Examination by Mr. PALMA:

Q. Do you know the applicant in this matter, Marcelo Tiglao?
A. Yes, sir.
Q. Do you know whether Don Marcelo Tiglao has any land in the jurisdiction of Mabalacat, Province of Pampanga?
A. Yes, sir.
Q. At what place?
A. At the place (sitio) called Montecillo Carrillo.
Q. Do you know what are the boundaries of that land?
A. I can state some of the adjoining properties, but not all.
Q. State the ones you know?
A. Towards the West, that of Mariano Pamintuan, and Sapang-Batu; towards the South lands belonging to Saturnino Samson and Fermina Pamintuan, and then on the side towards the highway our lands.
Q. I will show you this map and ask you to state if this is a graphical representation of the land which you know and to which you refer? (Map belonging to the applicant and marked Exhibit "A.")
55 A. On this side (pointing to East Side in the map) I know all the boundaries of the land because our land is here.
Q. Have you ever seen Marcelo Tiglao in possession of that land?
A. No, sir, all I know is that even to the smallest children know

that it was bought by Marcelo Tiglao, even the carabao herders recognize Marcelo Tiglao as owner of that land.

Q. Have you ever seen Marcelo Tiglao exercise any act by which he became recognized as owner of that land?

A. Yes, sir; Marcelo Tiglao notified all of the adjoining property owners that he was the owner of the land and that he had bought it.

Q. Do you know what use Marcelo Tiglao made of that land?

A. All I know is that he is the owner, because I knew from what he said and from what others said that he was the owner, but he has not done anything there yet.

Q. Do you know who was considered as owner of the land before Don Marcelo Tiglao?

A. Yes, sir.

Q. Who was it?

A. One Pedro Carrillo.

By Mr. AVANCENA:

Q. How long have you known that this land belongs to Don Marcelo Tiglao?

A. Since before the insurrection.

Q. For how long a time before?

A. I don't know how long because that matter did not interest me at all.

56 Q. If Marcelo Tiglao had worked the land you would have known it as owner of property adjoining that land?

A. Yes, sir.

Testimony of the Witness Ludovico Narcizo,

Who was duly sworn and stated that he was 42 years of age, married, farmer by occupation, and residing in the town of Mabalacat, Province of Pampanga.

Examined by Mr. PALMA:

Q. How old are you?

A. More than 40.

Q. Do you know the applicant, Marcelo Tiglao?

A. Yes, sir.

Q. Do you know whether the applicant, Marcelo Tiglao has any land in the town of Mabalacat, Province of Pampanga?

A. Yes, sir.

Q. Can you tell me more or less the boundaries of that land? The land in question?

A. Yes, sir.

Q. What are the ones which you know?

A. On the North lands belonging to Mariano Pamintuan; on the South Sapang-Batu; on the East lands belonging to the heirs of Morales, and the lands of Lorenzo Sanchez, and on the West the creek called Labac.

Q. I will ask you to examine the map attached to the records in this case and state if it is the map of the land to which you refer?

A. I do not know the land very well, only the boundaries.

Q. How is it you know the boundaries of the land?

57 A. In the year 1902 Don Marcelo Tiglao paid the taxes to me according to the territorial tax rate because I was Presidente of the town at that time.

Q. So you can not describe the land?

A. No, sir.

Q. Do you know if Marcelo Tiglao is the owner of that land, or not, the land to which you refer?

A. Yes, sir.

Q. How do you know it?

A. Because in the year 1900 I sent my carabaos (buffalos) and caraballas (female carabaos) there to pasture and I asked permission from that man.

Q. Where did you send your carabaos to pasture?

A. On that land.

Q. Where is that land situated?

A. In Sapang-Batu.

Q. How many times did you send you- cattle there to pasture?

A. One year only.

Q. Did you ask permission from anybody?

A. Yes, sir.

Q. From whom?

A. From Mr. Tiglao.

Q. Before that time did you send your cattle there to pasture?

A. Yes, sir.

Q. Did you also ask permission from somebody to allow you to pasture your cattle there?

A. Yes, sir.

Q. From whom.

A. From the — employed by Carrillo.

58 Q. Do you know the name of that employee?

A. No, sir.

Q. What is the name of this Carrillo to whom you refer?

A. They say his name is Pedro Carrillo.

Q. Was that land considered in the town as belonging to any private party?

A. No, sir.

Q. And what land is it?

A. I have heard that it belongs to Don Pedro Carrillo.

Q. And Pedro Carrillo, was he a private party, or what?

A. Yes, sir, he is a private party.

Q. Since when has that land been considered as belonging to Don Pedro Carrillo?

A. Since the year 1882.

Q. When was the first time that you saw that land?

A. It is a long time, since '82.

Q. The same land to which you refer as belonging to Don Pedro Carrillo, is it the same land which you say is the property of Marcelo Tiglao?

A. Yes, sir.

Q. How many times did you send your cattle there to pasture during the time it belonged to Carrillo?

A. I sent my cattle there to pasture three years.

Q. And during those three years did you ask permission of the man who was in charge for Don Pedro Carrillo?

A. Yes, sir.

By Mr. AVANCENA:

Q. You know that land on account of having pastured your cattle there?

A. Yes, sir.

59 Q. And for no other reason?

A. That is all; afterwards, to cut some firewood once I asked permission also from Mr. Tiglao.

Q. Do you know the land to which you are referring?

A. I know the part of it that I passed over.

Q. How much of the land do you know, a half, or a tenth part of it?

A. I have noticed that the part of the land which has been cleared off is larger than that covered with brush.

Q. On what part of the land did you pasture your cattle?

A. Towards Sapang-Batu.

Q. And you pastured your cattle only at that place?

A. Yes, sir.

Q. Over what area of the land, more or less?

A. I don't know.

Q. In cavanes of seed (rice) can't you make a guess?

A. The part which I have seen is very wide, I couldn't calculate what the area is.

Q. Can you not state even approximately?

A. I can not, no, sir.

Q. So you have not seen more of the land in question than the part where you pastured your animals, and the area of which you can not state?

A. Yes, sir.

Q. And the part of the land that you have seen, was there anything planted on it?

A. No, sir.

60 *Testimony of the Witness Teodoro Lacson,*

Who was duly sworn and stated that he was 60 years of age, widower, gardener by occupation, and a resident of Angeles, Province of Pampanga.

Examination by Mr. PALMA:

Q. Did you ever know one Rafael Lacson?

A. Yes, sir.

Q. Do you know whether this Rafael Lacson had or possessed any plantation or land in the town of Mabalacat?

A. Yes, sir; because I was one of his tenants.

Q. Do you know, more or less the boundaries of that land which belonged to Rafael Lacson?

A. Yes, sir.

Q. Will you state the boundaries, on the North, South, East and West?

A. It is bounded on the North by lands belonging to Mr. Michel and Mariano Pamuntuan and on the East by the lands of Lorenzo Sanchez and Carrillo.

Q. State what natural boundaries the land has, if any, such as forests, rivers or creeks?

A. Batiauan and Mabatid hills; Litang creek; Soclaban, Tacondo.

Q. When was the first time you saw that land?

A. In the year '73.

Q. How old were you then?

A. About 30 years of age.

Q. Who was considered as owner of that land at that time?

A. Rafael Lacson.

Q. Was the land cultivated at that time?

61 A. At that time the land was uncultivated, but in '73 we commenced to break and cultivate it.

Q. Were you one of those who ploughed the land?

A. Yes, sir.

Q. What part of the land was ploughed at that time, in relation to the whole?

A. At the side of Mabatid Hill.

Q. Do you know to whom the land passed after Rafael Lacson's time?

A. To Don Pedro Carrillo.

Q. Did you continue working the land when it went into the possession of Don Pedro Carrillo?

A. Yes, sir.

Q. How long a time did you work on that land after it went into the possession of Don Pedro Carrillo?

A. About ten years.

Q. Where do you live now; on the same land?

A. In the barrio of Capaya.

Q. What other use did Don Pedro Carrillo make of the land when he was the owner of it?

A. Corn and sugar cane was planted there, and during one year rice.

Q. When did you leave that land?

A. It is a long time, I do not remember when.

Q. Until what year did you cultivate that land?

A. Till the month of May, I believe it was in '88.

By Mr. AVANCENA:

Q. Why do you state that the land formerly belonged to Rafael Lacson and afterwards to Carrillo?

62 A. Because I was a tenant of Rafael Lacson.

Q. Can you state exactly the area of the land that was cultivated?

A. Yes, sir.

Q. What was the area of it?

A. It is very large, but I can't state the measurements of it.

Q. State if you know, whether Rafael Lacson first and Carrillo afterwards had any title to the land from the Government?

A. I do not know whether Rafael Lacson had any title to it or not, but I do know that he took possession of it in '83, and as to Carrillo I do not know either whether he had or not any title from the Government.

Q. Did you break up all of the land which is the subject matter of this case?

A. Yes, sir.

Q. How many times?

A. I farmed there for a long time, and frequently went over the plantation.

Q. Do you know the boundaries of that land, and what they consist of?

A. Yes, sir.

Q. What are the boundaries and monuments of that land?

A. Litang creek, Mabatid hill, Calgatigua, Pasbul-biabas, Maruglu, a forest, Tacondo, Sapang-batu, and Batiauan.

Q. Of all that land there was never cultivated more than the part to which you have referred and the area of which you can not state exactly?

A. Yes sir.

63 By the COURT:

Q. Were you a tenant of Pedro Carrillo?

A. Yes, sir.

Q. Did you pay any rent for the land to Pedro Carrillo?

A. No, sir; whatever I harvested we divided.

Q. For how long a time?

A. Some six years.

Evidence closed on the part of the applicant, and Sr. Avancena asked that the record be made to show that he objected to all of the evidence presented by the applicant.

The Court allowed each party three days in which to present their written arguments; counsel for the applicant to have three days from the time he received the transcript of the stenographic notes, and Sr. Avancena three days from the time he should receive a copy of applicant's argument.

I hereby certify that the foregoing is a true and faithful transcript of the stenographic notes taken by me in the above entitled application.

(Signed) JOSE SOTELO.

Manila, December 27th, 1904.

64 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

November 28, 1906.

General Register No. 2498.

Book of Decisions 10, p. 194.

Heard: 11th July, 1906.

Present: Hon. Chief Justice and Associate Justices Torres, Mapa, Carson, Willard & Tracey.

MARCELO TIGLAO, Plaintiff and Appellant,
versus
THE INSULAR GOVERNMENT ET AL., Defendants and Appellees.

Decision.

The appellant, Marcelo Tiglao, on the 5th of February, 1904, presented a petition to the Court of Land Registration, asking that he be inscribed as the owner of a tract of land containing 1,218 hectares situated in the barrio of Dolores, pueblo of Mabalacat, in the Province of Pampanga. The petition was opposed by the judge-advocate-general of the Division of the Philippines on the ground that the land described in the petition was a part of the military reservation of Stotsenberg, and it was also opposed by the Solicitor-General on the ground that the State was the owner of the land. Judgment was entered dismissing the petition and the petitioner has brought the case here by bill of exceptions.

On the 13th of July, 1873, the principalia of the town of Mabalacat undertook to grant to one Rafael Lacson, for the purposes of cultivation, a tract of land described as follows:

"Un terreno baldio con linderos por Norte el rio denominado Litang y las del chino cristiano Nicolas Cu-Juco, por Sur el rio Sapang-batu y los mones Batiauan y el montecillo denominado Tacondo; por Este el bosquecillo llamado Balanga y el montecillo de Mabatid y por Oeste el rio denominado Labac."

By a private document executed on the 6th of May, 1881, Rafael Lacson conveyed the property in question to Pedro Carrillo
65 and his wife, Edilberta Juarez. Upon the death of these grantees their interest in the land passed to Maria Paz Juarez and Rosa Juarez, and on the 6th of November, 1898, Rosa Juarez executed a deed purporting to convey to the petitioner all of the land described on the original concession made by the principalia of the pueblo of Mabalacat, it being stated in this deed that its extent was 743 hectares. No mention was made in this deed of the interest of the sister of Rosa Juarez, Maria Paz Juarez.

The concession made in 1873 by the principal men of the pueblo conveyed to Rafael Lacson no interest whatever in the land. This has already been held by this court in the case of Evangelista *vs.* Bascos *et al.* (3 Off. Gaz., p. 656).

The case is therefore governed by the decisions in Valenton *et al. vs.* Murciano (2 Off. Gaz., 434 No. 22) and Cansino *et al. vs.* Valdez *et al.*, No. 2468 decided July 16, 1906, in which it was held that possession of land such as this from 1873 down to the present time would give the possessor no title thereto as against the State. The petitioner claims, however, to be entitled to the benefits of paragraph 6 of section 54 of Act No. 926, the Public Land Act. That section is in part as follows:

"SEC. 54. The following-described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuance of a certificate of title therefor, to wit:

* * * * * * *

"6. All persons who, by themselves or their predecessors in interest, have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands as defined by said act of Congress of July first, nineteen hundred and two, under a *bona fide* claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war or force majeure, shall be conclusively presumed to have performed all the conditions essential to
66 a Government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter."

The evidence in the case, however, shows that neither the petitioner nor his grantors were in the open, continuous, exclusive and notorious possession and occupation of the land in question during the ten years immediately preceding the taking effect of Act No. 926. The evidence is practically conclusive that there was no cultivation or occupation of the land by anyone after 1885. One of the witnesses of the petitioner stated that at the time of the trial the petitioner had as yet done nothing with the land in the way of occupying and cultivating it. He had, however, notified the adjoining proprietors that he was the owner thereof. It is very clear that section 54 above quoted requires an actual physical occupation of the land, and the acts performed by the petitioner and his immediate grantor do not prove any such possession or occupation.

The judgment of the Court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter the case will be returned to the lower court for execution.

So ordered.

(Signed) CHARLES A. WILLARD.

We agree:

(Sgd.) C. S. ARELLANO.
" FLORENTINO TORRES.
" VICTORINO MAPA.
" A. C. CARSON.
" JAMES F. TRACEY.

Johnson J., did not sit in this case.

67 R. G. No. 2498.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Defendants and Appellees.

For the Inscription of Land.

Comes now the solicitor in the above entitled cause and excepts to the judgment therein and prays that this exception be given full force and effect.

Manila, December 12, 1906.

(Signed) RAF. PALMA,
Attorney for Solicitor.

Indorsed: Supreme Court of the Philippines. Clerk's Office. Filed Dec. 13, 1906. 3:16 P. M.

DECEMBER 15, 1906.

SIR: This Court, in session the 14th instant, adopted the following resolution:

"After a consideration of the exception presented by Attorney Palma to the decision of this Court dated the 28th of November, 1906, in cause No. 2498, Marcelo Tiglao *versus* The Insular Government *et al.*, the Court admits the same as of the time and in the manner interposed."

This is communicated to you for your information.

(Signed) J. E. BLANCO,
Clerk Supreme Court, P. I.

A true copy:
To Attorney-General and Palma.

68 R. G. No. 2498.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Appellant,
vs.
THE ATTORNEY-GENERAL ET AL., Defendants.

For the Registration of Land.

The appellant, through his attorney, respectfully petitions the Honorable Court for a new trial of this cause because the decision heretofore rendered is erroneous for the following reasons:

I. Because the Court held that the grant made in 1873 by the town board (*principalía*) of the town of Mabalacat transmitted no right to the property to Rafael Lacson;

II. Because the Court held that the possession of agricultural land from the year 1873 gave no right to the possessor of the property as against the State;

III. Because the Court held that neither the petitioner nor his predecessors had been in the open, continuous, exclusive and notorious possession and occupation of the land in question during the ten years immediately preceding the promulgation of Act No. 926;

IV. Because the Court held that Section 54 of Act No. 926 requires an actual occupation of the land in order to perfect title thereto in accordance with the said Act;

V. Because the Court held that the petitioner had no right to have the land recorded in accordance with the Mortgage Law or to perfect his title in accordance with section 54 of Act No. 926.

69 VI. Because the Court affirmed the decision of the lower court denying the prayer in this case.

Manila, December 18, 1906.

(Signed) RAF. PALMA,
Attorney for Appellant.

DECEMBER 20TH, 1906.

SIR: The Supreme Court in session the 19th instant adopted the following resolution:

"After an examination of the petition presented by Attorney Palma, praying for the reconsideration of the decision of this Court rendered in cause No. 2498, Marcelo Tiglao *vs.* The Insular Government *et al.*, for the inscription of certain land in the Registry of Property, the Court says: this petition having been presented after the period prescribed by the rules, it is denied."

This is forwarded to you for your information.

(Signed) J. E. BLANCO,
Clerk Supreme Court, P. I.

A true Copy:
Copies to Attorney-General and Palma.

Judgment.

December 21st, 1906.

Judgment Book No. 4.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Registry No. 2498.

MARCELO TIGLAO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Defendants and Appellees.

This Court having regularly acquired jurisdiction for the trial of the above-entitled cause, submitted by both parties for decision, after consideration thereof by the Court, upon the record, and its
70 decision and order for judgment having been filed on the twenty-eighth of November, nineteen hundred and six.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of Land Registration dated the twenty-sixth of January, nineteen hundred and five, and from which the above entitled appeal was taken, be affirmed, with the costs of this instance to the appellant.

It is further ordered that the Insular Government recover from the plaintiff the sum of $40.00 as costs.

[Seal of the Supreme Court.]

(Signed) J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 2498.

MARCELO TIGLAO, Appellant,
vs.
THE ATTORNEY-GENERAL ET AL., Appellees.

Now comes the undersigned attorney and asks that the Court reconsider the resolution dated the 19th instant, declaring that it has no jurisdiction of the motion presented by the appellant for the reconsideration of this cause for the reason that this motion was presented after the period prescribed by law.

This petition is based upon the fact that the decision in this cause, signed the 28th of November, fixed a period of twenty days (20)

before final judgment should be entered, and the attorney for the appellant was notified of this decision on the thirtieth (30) of November, and the motion for rehearing was presented and filed in the Office of the Clerk of this Court December 18 of this year,
71 before the decision became final.

If the period of twenty days fixed in the decision was for the purpose of giving to the appellant a greater period than is usual in which to ask for whatever remedy to the decision he desired before it became a final judgment, as believed by the attorney for the appellant, then the motion for a rehearing was presented within the time fixed by the Court in its aforesaid decision, especially since the notification of the same was made on the thirtieth day of November.

If the resolution of the Court of the 19th instant was based upon an error of calculation or computation of time, then the attorney for the petitioner asks that the Honorable Court reconsider its resolution and rectify the same if possible and decide the motion for a rehearing upon its merits.

Manila, December 21, 1906.

(Signed) RAF. PALMA,
Attorney for Appellant.

DECEMBER 27TH, 1906.

SIR: The Supreme Court in session the 26th instant, adopted the following resolution:

"After an examination of the petition presented by Attorney Palma, asking for a reconsideration of the resolution of this Court dated the 19th of December, in which the new trial sought in the case of Marcelo Tiglao *vs.* The Insular Government *et al.*, No. 2498, was denied for the reason that the period prescribed by the rules had expired, the Court denies the motion for the reconsideration asked."

This is communicated to you for your information.

(Signed) J. E. BLANCO,
Clerk Supreme Court, P. I.

A true Copy.
To Attorney-General and Palma.

72 R. G. No. 2498.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Appellees.

For the Registration of Land.

Comes now the appellant and excepts to the decision of the Supreme Court rendered in the above entitled cause on the 21st instant

and prays that this exception be filed and given due consideration and effect.

Manila, December 26, 1906.

(Signed) RAF. PALMA,
Attorney for Appellant, 4 Salcedo (Upstairs).

DECEMBER 28TH, 1906.

SIR: The Supreme Court in session the 27th instant adopted the following resolution:

"After an examination of the exception presented by Attorney Palma to the decision of this Court rendered in case No. 2498, Marcelo Tiglao *vs.* The Insular Government *et al.*, the court resolves to admit this exception as of the time and in the form interposed, and orders that it be united to the record and given proper effect."

This is communicated to you for your information.

(Signed) J. E. BLANCO,
Clerk Supreme Court, P. I.

A true Copy:
To Attorney-General and Palma.

73 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Appellant,
vs.
THE INSULAR GOVERNMENT ET AL.

For the Registration of Land.

Comes now Marcelo Tiglao, plaintiff and appellant in this cause, and says:

That final judgment having been rendered in this cause on the 21st of December, 1906, in which the petition for the inscription of the land by the petitioner was denied, and certain errors having been committed in said proceedings and judgment in this cause, with grave damages to the petitioner, as set out in the accompanying assignment of errors; and the actual value of the land in litigation being more than $25,000.00. as evidenced by the attached certificate of the Provincial Treasurer of Pampanga;

Wherefore, the petitioner prays that he be granted a writ of error from the Supreme Court of the United States, directed to the Supreme Court of the Philippine Islands for the correction of the errors committed and in order that the sentence rendered in this cause may be revised in accordance with the assignment of errors presented herewith.

It is also prayed that it be ordered that the record in this cause be translated into English in accordance with the rules prescribed by the Supreme Court of the United States.

Manila, December 28, 1906.

(Signed) RAF. PALMA,
Attorney for Petitioner, 4 Salcedo.

Received copy this 29th of December, 1906.
GREGORIO ARANETA.

74 R. G. No. —.

In the Supreme Court of the United States.

MARCELO TIGLAO, Plaintiff in Error,
versus
THE INSULAR GOVERNMENT ET AL., Defendants in Error.

In re Registration of Property.

Assignment of Errors.

Now comes Marcelo Tiglao and respectfully says that in the records and proceedings in the above entitled cause the following errors have been committed:

I.

The Court erred in deciding that the cession made in 1873 by the town council of Mabalacat did not convey to Rafael Lacson any right whatever to the land.

II.

The Court erred in deciding that possession of agricultural lands ever since the year 1873 does not give to the possessor any right of ownership whatever to the land as against the State.

III.

The Court erred in holding that there is no evidence to the effect that either the applicant or those who had transferred the land to him had been in the open, continuous and notorious possession and occupation of the land in question during the ten years immediately preceding the promulgation of Act No. 926.

IV.

The Court erred in deciding that neither the applicant nor those who transferred the land to him had been in open, con-
75 tinuous, exclusive and notorious possession and occupation of the land in question as is required by Act 926.

V.

The Court committed an error in deciding that Sec. 54 of Act 926 requires a material occupation of the land in order to perfect the title of the applicant in accordance with said Act.

VI.

The Court erred in not holding that the documents presented by the applicant prove his and his predecessors' possession and ownership of the land.

VII.

The Court erred in not deciding that the acts of possession performed by the applicant and the parties who transferred the land to

him give the right of both ordinary and extraordinary prescription to the applicant.

VIII.

The Court erred in not deciding that the acts performed by the petitioner since the date of the transferring of the land in question to him imply acts of possession over the same.

IX.

The Court erred in not deciding that the petitioner is entitled to registration of the land in question in accordance with the Mortgage Law, and to a title of ownership in his favor in accordance with Sec. 54 of Act 926.

X.

The Court erred in confirming the judgment of the lower Court which denied the application of the plaintiff in this cause.

Wherefore plaintiff prays that the decision of the Supreme Court of the Philippine Islands be revoked and that another one
76 in place thereof be rendered ordering that the land in question be registered in the name of the plaintiff.

(Signed) RAF. PALMA,
Attorney for the Plaintiff, 4 *Salcedo, Santa Cruz, Manila, P..I.*

Received copy this 29th day of December, 1906.
(Sgd.) GREGORIO ARANETA.

77 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Defendants and Appellee-.

Know all men by these presents, that we, Marcelo Tiglao, as principal, and Ambrosio Mendiola and Aguedo Tiglao, as sureties, are held and firmly bound unto The Insular Government *et al.* in the full and just sum of six hundred (600) pesos, Philippine Currency, to be paid to said The Insular Government, *his* attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 22nd day of March, in the year of our Lord One thousand nine hundred seven.

Whereas, lately at a session of the Supreme Court of the Philippine Islands, in a suit pending in said court between Marcelo Tiglao, plaintiff and appellant, against The Insular Government *et al.* defendants, and appellee-, a judgment and decree was rendered against the said Marcelo Tiglao, and the said Marcelo Tiglao having obtained

from said Court an order allowing an appeal to the United
78 States Supreme Court to reverse the judgment and decree of the aforesaid suit,

Now, the condition of the above obligation is such that if the said Marcelo Tiglao shall prosecute the said appeal to effect, and shall answer all costs that may be awarded against him, if he fails to make his plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

(Signed) MARCELO TIGLAO.
" AMBROSIO MENDIOLA.
" AGUEDO TIGLAO.

PHILIPPINE ISLANDS, *City of Manila, ss:*

Before me, the undersigned authority, on this date appeared personally Ambrosio Mendiola and Aguedo Tiglao with certificates of registration number 1372950 issued at Angeles—Pampanga on the 14th day of January 1907, and No. 1400488, issued at Mabalacat—Pampanga on the 31st day of January, 1907 respectively and declared under oath that they are the persons whose names are su-scribed to the foregoing bond and that they own real property in the Philippine Islands, and that each of them is worth the amount specified in the undertaking, over and above all just debts and obligations, and property exempt from execution.

(Sgd.) AMBROSIO MENDIOLA.
" AGUEDO TIGLAO.

Subscribed and sworn to before me by Ambrosio Mendiola and Aguedo Tiglao, this 22nd day of March, 1907.

(Sgd.) J. E. BLANCO,
Clerk Supreme Court, P. I.,
ex Officio Notary Public.

Approved this 23rd day of March, 1907.

(Sgd.) CHARLES A. WILLARD,
[SEAL.] *Associate Justice of the Supreme Court*
of the Philippine Islands.

To —— ——.

79 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Supreme Court of the Philippine Islands before you or some of you, between Marcelo Tiglao, plaintiff in error, and The Insular Government *et al.*, defendants in error, a manifest error hath happened, to the great damage of the said Marcelo Tiglao, plaintiff in error, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all information concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the City of Washington on the 21st day of July, 1907, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being in-
80 spected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 23rd day of March, in the year of our Lord, 1907.

[Seal Corte Suprema, Islas Filipinas.]

J. E. BLANCO,
Clerk of the Supreme Court of the Philippine Islands.

The foregoing writ of error is allowed this 23rd day of March, 1907, upon the giving of a cost bond with sufficient sureties in the sum of P600.00, Philippine currency, approved by me.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

81 THE UNITED STATES OF AMERICA, *ss:*

To Attorney General of the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States to be holden at the City of Washington, within one hundred and twenty days from the date of this citation, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Marcelo Tiglao is plaintiff in error, and the Insular Government *et al.*, defendants in error, to show cause if any there be, why the judgment in the said Writ of Error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 23rd day of March, in the year of Our Lord, 1907.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this — day of ——, 1907.

——— ———,
Attorney General for the Philippine Islands.

82 2498.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Plaintiff in Error,
vs.
THE INSULAR GOVERNMENT, Defendant in Error.

To the Honorable E. Finley Johnson, Associate Justice of the Supreme Court of the Philippine Islands:

Comes Marcelo Tiglao, plaintiff in error in the above entitled cause and respectfully represents:

I. That on account of the voluminous record in this case it is impossible to prepare the transcript within the time allowed by law.

II. That the Honorable Charles A. Willard, Associate Justice of the Supreme Court of the Philippine Islands who allowed the writ of error in said cause is at present absent in Australia.

III. That it is impossible on account of the distance to apply to the Honorable Justice, or to the Supreme Court of the United States for an enlargement of the time allowed by the rules for the filing and docketing of the cause in the Supreme Court at Washington.

Wherefore, your petitioner prays that your Honor, in the absence of the Honorable Justice Charles A. Willard, enlarge the time fixed by the rules so that it will not expire before the 11th day of August, 1907.

Manila, P. I., this 1st day of June, 1907.

(Sgd.) RAFAEL PALMA,
Attorney for Petitioner.

83 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 2498.

MARCELO TIGLAO, Plaintiff in Error,
vs.
THE INSULAR GOVERNMENT, Defendant in Error.

Decision.

JOHNSON, *J.*:

It being made to appear to the satisfaction of the undersigned by the petitioner herein that it will be impossible to prepare the record in the above-entitled cause within the time heretofore fixed by Justice Charles A. Willard, the time heretofore fixed for the purpose of perfecting the appeal in said cause is hereby extended until the 11th day of August, 1907.

It is so ordered.

E. FINLEY JOHNSON,
Associate Justice Supreme Court.

June 1, 1907.

84 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Marcelo Tiglao was appellant, and The Insular Government, and The Judge Advocate General of the United States Army were appellees, a final judgment was rendered by said Supreme Court on the twenty-first day of December A. D. 1906, in favor of the said Insular Government and The Judge Advocate General of the United States Army, and against the said Marcelo Tiglao; and that on the twenty-third day of March, A. D. 1907, said Marcelo Tiglao sued out a writ of error to said Supreme Court, directed to remove said cause to the Supreme Court of the United States.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, at Manila, P. I., this fifth day of July, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk.

85 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing pages constitute a true and correct transcript of the record and proceedings in the case of Marcelo Tiglao, plaintiff in error, *vs.* The Insular Government and the Judge Advocate General of the United States Army, defendants in error.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands this sixth day of July, One thousand nine hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

86 R. G. No. 2498.

ESTADOS UNIDOS DE AMÉRICA:

En la Corte Suprema de las Islas Filipinas.

MARCELO TIGLAO, Apelante,
contra
EL GOBIERNO INSULAR Y OTRO, Apelados.

Sobre Registro de Terreno.

Escrito de Apelación.

Comparece Marcelo Tiglao demandante y apelante en esta causa y expone.

Que habiendo recaido sentencia definitiva en esta causa el día 21 de Diciembre de 1906 por la cual se deniega la solicitud á la inscripción del terreno del solicitante y deseando hacer uso al propio tiempo quel del recurso de Writ of error, ya solicitado y obtenido en esta causa, del derecho de apelación que le concede la ley para ante la Corte Suprema de Estados Unidos por ser el valor de la materia del litigio más de Veinticinco Mil Dollars;

Por tanto, Marcelo Tiglao el demandante en esta causa pide que se le conceda apelación en esta causa á fin de que la sentencia de esta Corte sea revisada mediante la relación de errores que se acompaña y se hace parte de esta solicitud.

RAF. PALMA,
Abogado del Apelante.

Recibí copia hoy á 10 de Julio de 1907.

GEO. R. HARVEY,
Abogado del Gobierno Insular y otro.

And now to wit on July 11th 1907 it is ordered that the appeal be allowed as prayed for.

CHARLES A. WILLARD,
Associate Justice Supreme Court Philippine Islands.

87 R. G. No. 2498.

THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Appellees.

For the Registration of Land.

Application for Appeal.

Comes now Marcelo Tiglao, plaintiff and appellant in this cause and says:

That final judgment having been rendered in this cause the 21st day of December, 1906, in which the petition for the inscription of certain land belonging to the petitioner was denied and desiring to make use, in conjunction with a writ of error, already prayed for and obtained, of an appeal, as provided for by the law, to the Supreme Court of the United States, inasmuch as the subject-matter of the litigation is of greater value than Twenty-five Thousand Dollars:

Therefore, Marcelo Tiglao, the plaintiff in this case, prays that he be allowed an appeal to the end that the decision of this Court may be reviewed on the accompanying assignment of errors, which is made a part of this application.

(Sgd.) RAF. PALMA,
Attorney for Appellant.

Received copy this 10th day of July, 1907.

(Sgd.) GEO. R. HARVEY,
Attorney for Insular Government et al.

88 And now, towit, on July 11th, 1907, it is ordered that the appeal be allowed as prayed for.

(Sgd.) CHARLES A. WILLARD,
Associate Justice Supreme Court,
Philippine Islands.

In the Supreme Court of the United States.

R. G. No. —.

MARCELO TIGLAO, Plaintiff in Error,
vs.
THE INSULAR GOVERNMENT ET AL., Defendants in Error.

For the Registration of Land.

Assignment of Errors.

Comes now Marcelo Tiglao and respectfully states that in the record and proceedings in the above-entitled cause the following errors have been committed:

I.

The Court erred in deciding that the concession made in 1873 by the municipal board of the town of Mabalacat transmitted to Rafael Lacson no right whatever to the land.

II.

The Court erred in deciding that the possession of the farming lands since the year 1873 conferred upon the possessor no right of ownership as against the State.

III.

The Court erred in holding that it was not proven that the petitioner or those from whom he received the land had been in the open, continuous and notorious possession and occupation of the same during the ten years immediately preceding the promulgation of Act No. 926.

89 IV.

The Court erred in deciding that neither the petitioner nor those from whom he had received the land in question had been in the open, continuous, exclusive and notorious possession and occupation of it contemplated by Act No. 926.

V.

The Court erred in deciding that section 54 of Act No. 926 requires a physical occupation of the land to perfect the title of the petitioner in accordance with said Act.

VI.

The Court erred in not holding that the documents presented by the petitioner are proof of the possession and ownership of said petitioner and those from whom he received the land.

VII.

The Court erred in not deciding that the acts performed by the petitioner and those from whom he received the land conferred upon the said petitioner the right of ordinary and extraordinary prescription.

VIII.

The Court erred in not deciding that the acts performed by the petitioner from the date of the transfer to him of the land in question were acts denoting the possession of the same.

IX.

The Court erred in not deciding that the petitioner has a right to the registration of the land in question in accordance with the Mortgage Law, and to obtain a title deed to the property in accordance with section 54 of Act No. 926.

X.

The Court erred in affirming the judgment of the court below, denying the petition of the plaintiff in this case.

Wherefore, The said plaintiff prays that the judgment of the Supreme Court of the Philippine Islands be set aside and that
90 in its place the registration and inscription of the land in question in the name of the plaintiff be ordered.

(Signed) RAF. PALMA,
Attorney for Plaintiff.

4 Salcedo, Sta. Cruz, Manila, P. I.

91 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 2498.

MARCELO TIGLAO, Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Appellees.

For the Registration of Land.

Affidavit.

Marcelo Tiglao, having been previously duly sworn, says: That he is the plaintiff in the above-entitled cause; that as such plaintiff he knows the taxed value of the land described in his petition and the object of this litigation; that according to the last tax revision of the year 1906, the value of the said land was fixed at sixty-ei-*th* thousand pesos Conant, (P68,000.00) by the Board of Assessors of the Municipality of Mabalacat, Province of Pampanga, Philippine Islands, and seventy-four thousand, eight hundred pesos, Conant,

(P74,800.00) by the Provincial Board of Appeals; and that the actual value of this land is seventy-four thousand eight hundred pesos, Conant, (P74,800.00) exclusive of the improvements and buildings not belonging to the plaintiff.

Manila, P. I., July 10, 1907.

(Signed) MARCELO TIGLAO.

Subscribed and sworn to before me this 10th day of July, 1907. Cedula No. A-1395637, issued in Mabalacat, Pampanga, P. I., the 11th day of January, 1907, was exhibited to me.

[Seal of the Supreme Court of the Philippine Islands.]

(Signed) R. HERAS,
Acting Clerk Supreme Court, P. I.

92 UNITED STATES OF AMERICA, *Philippine Islands:*

In the Supreme Court of the Philippine Islands.

MARCELO TIGLAO, Plaintiff and Appellant,
vs.
THE INSULAR GOVERNMENT ET AL., Defendants and Appellees.

Know all men by these presents, that we, Marcelo Tiglao, as principal, and Ambrosia Mendiola and Aguedo Tiglao, as surities, are held and firmly bound unto The Insular Government *et al.*, in the full and just sum of six hundred (600) pesos, Philippine Currency, to be paid to said The Insular Government *his* attorneys, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10th day of July in the year of our Lord One thousand nine hundred seven.

Whereas, lately at a session of the Supreme Court of the Philippine Islands, in a suit pending in said Court between Marcelo Tiglao, Plaintiff and appellant, against The Insular Government *et al.*, defendants and appellees, a judgment and decree was rendered against the said Marcelo Tiglao, and the said Marcelo Tiglao having obtained from said Court an order allowing an appeal to the United States Supreme Court to reverse the judgment and decree of the aforesaid suit.

93 Now, the condition of the above obligation is such that if the said Marcelo Tiglao shall prosecute the said appeal to effect, and shall answer all costs that may be awarded against him, if he fails to make his plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

(Sgd.) MARCELO TIGLAO.
" AMBROSIO MENDIOLA.
" AGUEDO TIGLAO.

PHILIPPINE ISLANDS, *City of Manila, ss:*

Before me, the undersigned authority, on this date appeared personally Ambrosio Mendiola and Aguedo Tiglao with certificates of registration number A1372950 issued at Angeles—Pampanga on the 14th day of January, 1907, and No. A1400488, issued at Magalan, Pampanga on the 31st day of January, 1907, respectively, and declared under oath that they are the persons whose names are subscribed to the foregoing bond and that they own real property in the Philippine Islands, and that each of them is worth the amount specified in the undertaking, over and above all just debts and obligations, and property exempt from execution.

(Sgd.) AMBROSIO MENDIOLA.
" AGUEDO TIGLAO.

Subscribed and sworn to before me by Ambrosio Mendiola and Aguedo Tiglao this 10th day of July, 1907.

(Sgd.) R. HERAS,
Acting Clerk Sup. Ct., P. I.,
ex Officio Notary Public.

[Seal Corte Suprema, Islas Filipinas.]

Approved this 11th day of July, 1907.

(Sgd.) CHARLES A. WILLARD,
Associate Justice of the Supreme Court
of the Philippine Islands.

ST.

94 THE UNITED STATES OF AMERICA, *ss:*

To Attorney General of the Philippine Islands:

You are hereby cited and admonished to be in and appear at the Supreme Court of the United States to be holden at the City of Washington, within one hundred and twenty days from the date of this citation, pursuant to an appeal filed in the Clerk's office of the Supreme Court of the Philippine Islands, wherein Marcelo Tiglao is plaintiff and appellant, and the Insular Government *et al.*, defendants and appellee-, to show cause if any there be, why the judgment in the said appeal mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this 11th day of July in the year of Our Lord, 1907.

CHARLES A. WILLARD,
Associate Justice of the Supreme Court
of the Philippine Islands.

I admit the receipt of a copy of the above citation and accept service thereof as though regularly had this 10th day of August, 1907.

GREGORIO ARANETA,
Attorney General for the Philippine Islands.

ST. V. D.

95 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein Marcelo Tiglao was appellant and The Insular Government and The Judge Advocate General of the United States Army were appellees, a final decree was rendered by said Court on the twenty-first day of December, A. D. 1906, in favor of the said Insular Government and The Judge Advocate General of the United States Army, and against the said Marcelo Tiglao, and that on the eleventh day of July, A. D. 1907, said Marcelo Tiglao prayed an appeal to the Supreme Court of the United States, which was allowed.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Supreme Court of the Philippine Islands at Manila, P. I., this fourteenth day of August, A. D. 1907.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

96 THE UNITED STATES OF AMERICA:

The Supreme Court of the Philippine Islands.

I, R. Heras, Acting Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing pages constitute a true and correct transcript of the proceedings in the appeal in the case of Marcelo Tiglao, plaintiff in error, *vs.* The Insular Government and the Judge Advocate General of the United States Army, defendants in error.

In witness whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the Philippine Islands, this fourteenth day of August, One thousand, nine hundred and seven.

[Seal Corte Suprema, Islas Filipinas.]

R. HERAS,
Acting Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 20,932. Philippine Islands supreme court. Term No. 529. Marcelo Tiglao, plaintiff in error and appellant, *vs.* The Insular Government of the Philippine Islands *et al.* Filed December 14th, 1907. File No. 20,932.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1908.

No. 220.

MARCELO TIGLAO, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS ET AL.

IN ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR PLAINTIFF IN ERROR AND APPELLANT.

STATEMENT.

The plaintiff in error began a proceeding on February 5, 1904, under the Land Registration Act (Act No. 496, United States Philippine Commission), for the registration of title to a tract of land containing 1,218 hectares (about 3,000 acres), situated in the town of Mabalacat, Province of Pam-

pamga (R., 1, 2). The Court of Land Registration denied the application (R., 6–9), whereupon the petitioner appealed to the Supreme Court of the Philippine Islands. There the decision of the Court of Land Registration was affirmed (R., 35-36), whereupon both writ of error and an appeal were severally taken to this court, the amount involved being in excess of $25,000 (R., 44, 49, 51).

In his application to the Court of Land Registration the petitioner describes the lands, title whereto he seeks to have registered, and attaches the documents which constitute his chain of title. Oppositions to the application were filed by the insular government (R., 5) and by the commanding general of the Philippines (R., 3-5), denying the applicant's title and insisting that the lands he claims are public lands.

The title of the applicant is deraigned as follows:

A grant from the president and council of the town of Mabalacat, dated July 13, 1873, to one Rafael Laczon, a resident of the town of Angeles, in the Province of Pampamga, the latter being the town where the Land Registration Court sat for the trial of this cause. This instrument recited that the said Laczon had theretofore appeared before the mayor and council of Mabalacat, brought their attention to a certain tract of land situated within the township of Mabalacat (describing the lands by natural monuments), and asked permission to cultivate the same. The instrument goes on to recite (R., 11) that there was no objection to the request, for the reason that the land asked for was uncultivated, and was at the time much used by brigands and cattle thieves and Negritos (a savage tribe) as a hiding place. The document then proceeds:

> " in view thereof, they (meaning the president and
> " council) *give and yield* the said lands to the peti-
> " tioner, with the sole condition that he will make
> " himself a resident of this town, otherwise not to
> " permit him (to) take possession of said land, to
> " which condition the petitioner willingly agreed *and*

> "*registered himself as a resident of this town.* A "copy of this resolution shall be given to the said "petitioner, to be used by him as a title of owner- "ship of said land, *which title will give him right to "transfer and convey the same to his heirs and "assigns*" (R., 11).

As to the legal effect of this instrument, we submit that it was a grant of the fee simple title upon a condition, and that if the condition was fulfilled the title vested. Performance of the condition of becoming a resident of the town appears from the recitals of the grant as well as from the uncontradicted testimony in the case.

The judge of the Land Court, it is true, says in his decision (R., 8) that—

> "the instrument of cession does not confer upon "Laeson the power to sell the land, but simply to "devise it to his descendants,"

but in view of the law under which, as we contend, this grant was made by the president and council of Mabalacat, we have no doubt that it was like the usual Spanish grants in a sparsely settled colony—conveying fee simple title upon condition of cultivation and opening up the land. We shall, therefore, confine ourselves to the more vital question, namely, were the president and council of the town of Mabalacat empowered, by the land laws in force in the Philippine Islands on July 13, 1873, to make this grant? Before doing so, a few words will trace into plaintiff in error the title conveyed to the original grantee, Laczon.

On May 6, 1881, Laczon conveyed the land in question, together with "the house and warehouse built on the place where I live," and 16,000 or 17,000 plants of sugar cane, which it seems represented the improvements he had put upon the land since 1873, to Pedro Carrillo and his wife, for 400 pesos (R., 7 and 12).

On November 7, 1898, a niece of Carrillo's wife, whose

title was derived under the wills of her aunt (R., 7 and 14) and uncle (R., 7 and 12), sold to the plaintiff in error (R., 19).

The decision of the judge of the Court of Land Registration (R., 8) says:

> "No law has been cited to the court, nor has any "been discovered by it, authorizing municipal offi- "cers to convey public lands to private individuals, "as was attempted by the pueblo of Mabalacat in this "case."

He therefore holds that the grant made in 1873 by the town council of Mabalacat did not convey to Rafael Laczon any right whatever to the land, and this ruling, sustained by the Supreme Court of the Philippine Islands, is the basis of our first assignment of error.

THE ASSIGNMENTS OF ERROR.

These appear at large in the Record (pp. 50-51).

ARGUMENT.

I.

THE COURT ERRED IN DECIDING THAT THE CONCESSION MADE IN 1873 BY THE MUNICIPAL BOARD OF THE TOWN OF MABALACAT TRANSMITTED TO RAFAEL LACZON NO RIGHT WHATEVER TO THE LAND (R., 50).

Proceeding now to the law of the case, the attention of this court is respectfully invited to Book 4, Title 12, Law 1 of the "Compilation of Laws of the Indies." It may be found in White's "Compilation of Spanish Colonial Land Laws," Washington, 1828, the same being House Document No. 121, 20th Congress, 2d session, on page 38 thereof. A much better translation of the law cited is set out on pages 540-541 of

Vol. 3, Philippine Reports, in the case of *Valenton vs. Munciano*.

This law, which was for all Spain's newly-discovered, beyond-sea possessions, vested general authority to issue grants in "the governor of the new settlement" (3 Philippine R., bottom of page 540), and provided (p. 541) that

> "To those who shall have labored and established
> " a home on said lands and who shall have resided in
> " the said settlement for a period of four years we
> " grant the right thereafter to sell and in every other
> " manner to exercise their free will over said lands as
> " over their own property."

This law was later amplified by Law 8 of the aforesaid Book 4, Title 12, of the "Laws of the Indies." It does not curtail the power vested by Law 1 in governors of new settlements to issue grants of land, but it does provide an additional method of getting title to land, whereby persons desiring to open up land may apply to the town council of the township in which they purpose to settle. Inasmuch as this law is the cornerstone of our title, we confidently invite the attention of the court to its provisions, set out in full in 3d Philippine Reports, 542, as follows:

> " We command that if a petition shall be presented
> " asking the grant of a lot or tract of land in a city
> " or town in which one of our courts may be located,
> " the presentation shall be made to the municipal
> " council. If the latter shall approve the petition,
> " two deputy magistrates will be appointed, who will
> " acquaint the viceroy or municipal president with
> " the council's judgment in the matter. After con-
> " sideration thereof by the viceroy or president and
> " the deputy magistrates, all will sign the grant, in
> " the presence of the clerk of the council, in order
> " that the matter may be duly recorded in the coun-
> " cil book. If the petition shall be for the grant of
> " waters and lands for mechanical purposes, it shall
> " be presented to the viceroy or municipal president,
> " who will transmit it to the council. If the latter

> " shall vote to make the grant, one of the magistrates
> " will carry its decision to the viceroy or president,
> " to the end that, upon consideration of the matter by
> " him, the proper action may be taken."

This law clearly permits applications for land grants in townships where there is a court, to be made to the local authorities, and specifically designates as such local authority the municipal council. The language is "The presentation "shall be made to the municipal council." That the original grantee in this case, Rafael Laczon, received his grant from the municipal council in 1873, in contemplation and pursuance of Laws 1 and 8 aforesaid, and by authority thereof, is, we submit, entirely clear. No fraud being charged against the town council in this regard, it will be presumed that they acted by authority of law. We point out a law authorizing them to make grants with a view of opening up the country, and ask that the grant they did make be construed in the light of the law conferring upon them authority to make such a grant. This done, there is no escape from the conclusion that the town council of Mabalacat intended to give Laczon a fee simple title, provided he cultivated the land for the period contemplated by the then existing land grant law. Residence within the town of Mabalacat was the sole condition imposed. Cultivation of the land thus granted was assumed, such being the object of the grant. There being no express condition to that end nor any conditions of time expressed, it must be considered that the municipal authorities acted under the authority of the law cited *supra*, and which necessarily became part of the grant with its attendant legal effects.

The Solicitor General's brief in the Cariño case (212 U. S., page 449) states the first proposition on which we rely better than we could state it ourselves:

> " Here were grants to subjects of Spain, which four
> " years of residence and tillage ripened into a fee sim-
> " ple title." * * *

True, he argues upon the theory that this law was not one intended to benefit or include natives, but this legislation was at the outset of Spain's work as a colonizing nation, and the whole mass of her subsequent colonial laws looks, in theory at least, with an eye single to the welfare of her island subjects. This conclusion is demonstrated by Spain's further legislation (Law 8, Title 12, book 4, *supra*), whereby grants by municipalities were authorized without any such condition. The suggestion of the Government's brief in the Cariño case (p. 7), following our quotation therefrom *supra*, that the compulsory service required of the Indians negatived any right in them to receive and enjoy grants of land, is well answered upon the reply brief of counsel for Cariño (p. 7), thus:

> " We do not find in this compulsory impressment
> " of service to the benefit of settlers in a distant and
> " uncivilized country, accompanied with a require-
> " ment for compensation and good treatment, and a
> " forbiddance of any injury, any ground for doubt-
> " ing or disturbing the very frequent and very ex-
> " plicit recognition of the Indians' right to property,
> " to be found in the numerous laws cited in the
> " original brief."

With all respect to the learned Judge of the Court of Land Registration, we do not think his suggestion (R., 8) which is, in substance, that the instrument of grant amounted, on its face, to an attempt to convey an estate for life in the grantee, with remainder to his heirs, is sound. Tested by settled rules a grant to one and "to his heirs and assigns" passes the full legal title (R., 11).

We are not unmindful that on November 10, 1905, in the case of *Evangelista v. Bascos* (5 Philippine, R., 255), the Supreme Court of the Islands held the contrary of the proposition for which we contend. In that case (p. 256) it was held, with regard to a grant by a town council similar to the one in this case, that a town council had no authority to

make such grant. Very little stress was laid upon this point in that case. The court dismissed the question with these few words—

> "The title to this land could not have been granted "by this instrument, because the persons executing "it had no power to convey it."

II.

THE COURT ERRED IN DECIDING THAT THE POSSESSION OF THE FARMING LANDS SINCE THE YEAR 1873, CONFERRED UPON THE POSSESSOR NO RIGHT OF OWNERSHIP AS AGAINST THE STATE (R., 50).

The effect of the rulings of the Philippine Supreme Court as to land grants is to deny (1) that four years' possession and cultivation under a grant from a municipal council, made pursuant to Law 8, above quoted, vests any title or interest whatever in the grantee; (2) that such four years' possession, conferred in good faith and accepted in good faith, will ripen into prescriptive title by ten years' possession under color of title, under the provisions of the Spanish law hereinafter cited.

We respectfully submit:

(1) That the grant to Laczon by the municipal council of Mabalacat vested full title in him, and after four years' possession and cultivation became indefeasible, with "the "right thereafter (quoting from Law 1 of the 12th title of "book 4 of the Laws of the Indies, aforesaid, set out in 3d "Philippine R., 541), to sell and in every other manner "to exercise their (his—Laczon's) free will over said land "as over their (his) own property."

(2) That the instrument aforesaid, if made in good faith—as it clearly was, for who can suppose that the municipal council of Mabalacat, with the parish priest on hand to advise them, doubted their authority to perform, in the interest

of the common good and the improvement of public order, a simple act like this; or who can doubt that this farmer, Laczon, ever for a moment doubted the priest's knowledge of the law—constituted good color of title in contemplation of the Spanish statute requiring ten years' possession under color of title. We translate *justo titulo* as meaning "color of title." In the statute referred to those are the Spanish words used, and there can be no question as to the correctness of this translation.

On this point we avail ourselves of the labors of counsel in the case of *Cariño v. The Insular Government* of the Philippine Islands (recently decided in this court and fully cited below), wherein they set out as follows:

> "HISTORY OF THE DECREE OF 1880 MAKES IT CERTAIN THAT THE LAW INTENDED TO RECOGNIZE ACQUISITIVE PRESCRIPTION.
>
> "An important part of the history of the regulations of June 25, 1880, which contain an elaborate Code of Public Land Laws, is contained in the report of the Council of State thereon (to be found in the 'Guia de Compradores de Torrenos Baldios y Realengos de Filipinas,' by Berriz, 1886, pages 17-23). From this report we quote, translating literally rather than idiomatically:
>
> "'The Council of State commends the importance 'of the subject, showing that almost all property in 'the Philippines is found in the identical condition 'of that of Ramirez, wherefore that ordered by the 'directorate would disturb in great degree the rights 'of proprietors (land owners); and in order to avoid 'such complications it proposes that general rules 'be promulgated to fix the status of property, upon 'the basis of determining a period of 20 to 30 years, '*within which the possession of land becomes legalized, even though usurpation exists;* that for sales 'made outside of this period, terms may be fixed 'for making an adjustment between the State and 'the purchaser according to whether the lands have 'been placed under cultivation or not. * * *

"'* * * In such belief the council deems that "'it should commence with the *principle that the* "'*lapse of a fixed period legalizes completely all pos-* "'*session*, shortening or lengthening this period ac- "'cording to whether or not there are present good "'faith and just (color of) title, which are the most "'important circumstances or conditions in general "'law for the prescription of things.' * * *

"As to possessors in good faith and under just (color of) title, whether the lands are cultivated or not, it is sufficient without doubt, to establish the ordinary prescription of ten years, since under the especial conditions in the Islands and, above all, in view of the necessity and urgency of placing upon a solid basis this class of property in the Archipelago, it would seem to be excessive to exact a greater number of years even treating of uncultivated lands, if any difference were to be established in this regard. But for those who lack title (titulo), possession must be shown for a greater number of years, and there must be established besides the distinction between uncultivated and cultivated lands, since apart from the interest of economic and social order which commend the facilitation of the acquisition and the ownership of said lands, there should not be forgotten the doctrine of law which can never consent to the leveling of the possessor with title and him who lacks same, nor to rewarding equally him who, by his labors, has purged in a certain degree the vice of his acquisition, contributing furthermore to augment the common wealth, and him who has not employed his forces and capital in the cultivation of what he has usurped; an equal distinction it is also proper to adopt for the cases of adjustment which will obtain in the case of all persons who cannot be considered proprietors by prescription" (*i. e.*, those whose possession has been for less than the fixed period.) * * *

"* * * In resumé, it being the purpose to constitute and fix the ownership of former public lands in the Philippines by the uninterrupted possession of the same, the Council, omitting discussion of the

other doctrines which are recommended, which it considers acceptable in general and which are not so directly related with that high purpose, deems it proper to adopt the three following bases:

"1. *There shall be considered as owners, for all legal purposes, of the lands in question, those who may establish that they have possessed the same without interruption during ten years under just (color of) title and in good faith.*

"2. Equally there shall be considered as owners those who, lacking title, may establish that they have possessed the said lands without interruption for 20 years, if the same are found under cultivation, and for 30 years if the said lands are found uncultivated; and

"3. The interested parties who are not found included in the two preceding provisions *may legalize* their possession *and, therefore, acquire ownership* of the said lands, by means of adjustment in accordance with the price at the original adjudication, or at the time of the entry thereon if cultivated lands are in question, and with the price they may have at the time of the claim, if they are uncultivated lands."

Following this report the royal decree confirmed and approved "the attached regulations." The part thereof affecting the case at bar is as follows:

"ART. 4. For all legal effects those will be considered proprietors of the royal lands herein treated who may prove that they have possessed the lands without interruption during the period of ten years *by virtue of a good title and in good faith.*

"ART. 5. In the same manner, those who *without such title deeds* may prove that they have possessed their said lands without interruption for a period of twenty years, if in a state of cultivation, or for a period of thirty years, if uncultivated, shall be regarded as proprietors thereof. In order that a tract of land may be considered cultivated it will be necessary to show that it has been broken within the last three years.

> "ART. 6. Interested parties *not* included within the two preceding articles may legalize their possession and thereby acquire the full ownership of the said lands, by means of adjustment proceedings, to be conducted in the following manner: * * *"

Before this court handed down the opinion in *Cariño vs. The Insular Government of the Philippine Islands*, construing Book 4, Title 12, Law 14, of the Recopilacion de Leyes de las Indias, the American counsel for plaintiff in error in the case at bar had been retained to present it here, and among the papers forwarded at the time from Manila by our then associate there, Hon. Rafael Palma, a distinguished member of the bar of the Philippine Islands, and now a member of the Philippine Commission, were certain suggestions prepared by him and designed to aid in the presentation of the case before this court. One of these suggestions—we have been able in Washington to procure only a rather crude translation of them—was as follows:

> "The just prescription is recognized by this law, "and such, according to the Spanish laws, might be "ordinary with a just title and in good faith in the "possession for the period of 10 years, and extraordi- "nary for the period of 30 years without a just title "or good faith. (See the Laws of the Partidas, the "Spanish Civil Code of '89 and the Mortgage Law of "the year '93.)"

The provision of the Laws of the Partidas to which Mr. Palma refers is in the Third Partida, Title XXIX, Law 18. We are indebted, for this citation, to the brief of counsel for plaintiff in error in the Cariño case (*supra*), the fundamental law of which, as laid down by this court, must, we submit, control the case at bar. As they say in this brief:

> "Law 18 provided for ordinary prescription of 10 "and 20 years, substantially the same as Art. 1957 "of the Civil Code."

We give the translation of Section 1957 of the Spanish Civil Code published by the Bureau of Insular Affairs of the War Department in 1899:

> "ART. 1957. Ownership and other property rights in real property shall prescribe by possession for ten "years as to persons present, and for 20 years with "regard to those absent, with good faith and with a "proper title." (Translation of the Civil Code in force in Cuba, Porto Rico and the Philippines, War Department, 1899.)

The Mortgage Law of 1893 is similar.

That the contention of our former associate in the court below, above quoted, is the true law; that he was right and that court wrong, is settled by the language of the opinion of this court in Cariño's case, to wit:

> "The older decrees and laws cited by the counsel "for the plaintiff in error seem to indicate pretty "clearly that the natives were recognized as owning "some lands, irrespective of any royal grant. In "other words, Spain did not assume to convert all the "native inhabitants of the Philippines into tres-"passers or even into tenants at will. For instance, "Book 4, Title 12, Law 14, of the Recopilacion de "leyes de las Indias, cited for a contrary conclusion in "*Valenton v. Murciano*, 3 Philippine Rep., 537, "while it commands viceroys and others, when it "seems proper, to call for the exhibition of grants, "*directs them to confirm those who hold by good "grants or justa prescripcion.* It is true that it be-"gins by the characteristic assertion of feudal over-"lordship and the origin of all titles in the King or "his predecessors. That was theory and discourse. "*The fact was that titles were admitted to exist that "owed nothing to the powers of Spain beyond this "recognition in their books.*"

In this connection also, we invite the attention of the court to the present American rule in the Philippines as to title

by prescription, laid down in section 41 of Act 190 of the Philippine Commission, known as the "Code of Civil Procedure," which is as follows:

> "Ten years' actual adverse possession by a person "claiming to be the owner for that time of any land "or interest in land, uninterruptedly continued for "ten years by occupancy, descent, grants or other- "wise, in whatever way such occupancy may have "commenced or continued, shall vest in every actual "occupant or possessor of such land a full and "complete title, saving to the persons under disabili- "ties the rights secured by the next section. In order "to constitute such title by prescription or adverse "possession, the possession by the claimant or by the "person under or through whom he claims must "have been actual, open, public, continuous, under a "claim of title exclusive of any other right and ad- "verse to all other claimants. But failure to occupy "or cultivate land solely by reason of war shall not "be deemed to constitute an interruption of possession "of the claimant, and his title by prescription shall "be complete, notwithstanding such failure to oc- "cupy or cultivate the land during the continuance "of war." (Philippine Code of Civil Procedure, sec. 41).

The Land Court found that Laczon remained in possession of and cultivated the land from 1873 to 1881 (R., 8). In 1881 he sold to Pedro Carrillo, who, the court finds, cultivated the land until 1885 (R., 8). Pedro Carrillo, it seems, ceased to cultivate after 1885 (whether because of local disturbances of public order by the brigands and cattle thieves, or because of illness, or what, does not appear (R., 8). Francisco de Guzman testified that after Pedro Carrillo ceased to cultivate the land in 1885 he (Guzman) continued in charge of the land for Carrillo for some years and prevented people from cutting wood thereon (R., 24)). True, he admits that while he was in charge of same, people did not ask permission of him when they pastured their cattle on the land (R., 25). But pasturing cattle on a neighbor's land

without his consent is not peculiar to the Philippine Islands, nor does a failure to prevent the same operate to revert title to the Government in those islands any more than in this country.

Teodoro Laczon testified that (R., 33) he cultivated portions of the land for ten years after it had passed to Carrillo (which was in 1881) as his tenant, and again (R., 34) he testifies that for some six years he was a tenant on shares and cultivated the land, dividing the crop with Carrillo. This testimony certainly negatives the claim that Carrillo had abandoned the land during this period and demonstrates the *bona fides* of the continuance of his occupation and ownership, even though he ceased to cultivate after 1885 and his possession thereafter became merely constructive. In 1885 he and his predecessor in title had been in actual possession since 1873—12 years. Says the decision of the Court of Land Registration (R., 8):

> "We find, therefore, that portions of the land were "cultivated by Rafael Laczon between 1873 and "1881; that Carrillo cultivated certain parts thereof "until 1885." * * *

If Teodoro Laczon rented and cultivated part of this land as he claims, "for ten years after it passed to Carrillo" (R., 33), or even for six years (R., 34), then the land was *not* "practically abandoned," to use the language of the judge of the Land Court, after 1885.

In 1898 Carrillo's niece, Rosa, as already set forth above, sold the land to Tiglao, the plaintiff in error here.

In examining the testimony we notice, on page 29, in the testimony of the witness, Morales, when asked if he knows whether Tiglao has any land in Mabalacat, he answers "yes," and when asked where it was he replied (if we may be permitted to restate it) that it was at "Carrillo's Hill." The exact reply was, "at the place (sitio) Montecillo Carrillo." We think this testimony important because it is the testi-

mony of a farmer who lives in that neighborhood. Wherever a new country is opened up the natural features of the country—hills, valleys, river crossings, and the like—usually take the name of some one of the pioneers who blazed the way, and the farmers who come afterwards, in more settled times, and till the soil, continue to use such designations.

The essential righteousness of our claim upon this land is that Laczon reduced it from a hiding-place for brigands and cattle thieves to a productive farm, under the auspices of a government whose wise policy was to foster and encourage just such enterprises upon the part of its industrious and law-abiding subjects.

Also in the testimony of Morales, at the bottom of page 29 and top of page 30, we find this:

> "Q. Have you ever seen Marcelo Tiglao in possession of that land?
>
> "A. No, sir; all I know is that *even to the smallest children know that it was bought by Marcelo Tiglao; even the carabao herders recognize Marcelo Tiglao as owner of that land.*"

He also states that, in answer to the question whether he knows who was considered as the owner of the land before Tiglao, that it was Pedro Carrillo. There is no evidence in the record as to the date of the death of Carrillo, but there is nothing surprising in the fact that for a number of years the land lay uncultivated. Carrillo may have died and his wife and niece found themselves unable to attend to the land themselves. Such a course certainly does not signify "abandonment" of title.

There seems to be a disposition in this record to treat Tiglao as an imposter. Nevertheless Narcizo testified that he was mayor of Mabalacat in 1902 and collected taxes on this land from Tiglao (R., 31); also that in 1900 he, Narcizo, sent his cattle to pasture on the land now in dispute *after first obtaining the permission of Tiglao* (R., 31); also that before Tiglao owned the land, Pedro Carrillo had been considered the owner "since 1882" (R., 31); also, that during

Carrillo's ownership, the witness got permission from Carrillo's agent in charge to pasture his cattle there (R., 32); also that he asked Tiglao's permission to cut fire wood off the land (R., 32).

Upon the undisputed facts, our client, plaintiff in error, bought from a woman whose title came to her under the wills of Pedro Carrillo and his wife. The original grantee, Laczon, received his grant in 1873, and remained in possession until 1881, in which year he sold to Pedro Carrillo, who occupied and cultivated the land until 1885. Thus, therefore, we have here 12 years' actual possession, in good faith, under color of title.

In our judgment the decision of the Court of Land Registration (R., 6-9) does not state all the facts brought out on the hearing that were favorable to Tiglao and material to his case.

We have already dealt somewhat with the testimony, but we deem it our duty to call the attention of this Honorable Court to certain portions thereof not properly dealt with by the Land Court.

The decision of that tribunal states (R., 7) that "there is "nothing in the record showing what became of the in- "terest of Maria Paz Juarez in this property, though one "of the witnesses testified upon the hearing that there had "been a partition between the two sisters, in which parti- "tion this property corresponded to Rosa Juarez." According to Rosa's husband, Lintag, a druggist of Malolas, Maria delivered the title deeds to her in 1898, and she sent Francisco de Guzman to look after the land and he, acting as her agent, took charge of the land, etc. (R., 29).

Evidently Rosa got the land in dispute with her sister's consent, but this is not material. As was stated by this court in Cariño's case, of the application to the land court under act 496 of the Philippine Commission:

> "It is a proceeding *in rem* under a statute of the "type of the Torrens' Act. * * *"

Section 31 of act 496 (the Land Registration Act) provides for the service by publication usual under the "Torrens' System" of Land Titles, which, when completed, is good and binding against all whom it may concern—against the world. This section was presumably duly complied with by the land court in this case. Even if Maria had any interest in the land, she failed to assert it in this proceeding, and is concluded.

We earnestly object to the language of the learned Judge of the Land Court (R., 8), that "this land has been *virtually abandoned* since 1885." Immediately after these words, and in support thereof, he says that Francisco de Guzman testified that the land was not cultivated subsequent to 1885. Guzman also testified (R., 24) that he was on the land for two years before this as Carrillo's agent, and continued in charge for Carrillo for ten years. This absolutely negatives "abandonment" up to 1893, if we are to accept Guzman's testimony. The court says (R., 8) that Teodoro Laczon's testimony (R., 33), that he cultivated portions of the land as lessee for ten years after it passed to Carrillo "is "in conflict with the testimony of Guzman, who was in "charge of the land as agent." We submit that this is a finding that Guzman "was in charge of the land as agent" for Carrillo for ten years after the land passed to Carrillo, *i. e.*, up to 1891, and that, as we have elsewhere urged, even if some pasturing of cattle on the land by neighbors did occur during those years, this did not work a forfeiture of title.

As hereinbefore stated, we take issue with the Supreme Court of the Philippine Islands as to the law of this case, and to demonstrate that our view is correct, we rely upon the case of Cariño *v.* The Insular Government of the Philippine Islands, *supra*, 212 U. S., ——. There the judgment of the Supreme Court of the Philippines was reversed. We shall contend and endeavor to show that the same fundamental principles of law and the same considerations of ele-

mental justice which moved this honorable court to reverse the judgment of the Philippine court in the Cariño case, must operate to require a reversal in the case at bar.

Until Cariño's case was decided the Philippine court had adopted a strict construction of the law of Spain as it stood at the time of the Treaty of Paris, following literally the Spanish statutes as to public lands, especially the theory that prescription could not run against the Spanish Crown. Since the Cariño case there must be a different attitude by the Philippine courts toward prescriptive titles, whether purely prescriptive or with color of title.

Says Mr. Justice Holmes, in delivering the opinion in the Cariño case:

> "How far a new sovereign shall insist upon the "theoretical relations of the subjects to the head in "the past, and how far it shall recognize actual facts, "are matters for it to decide."
>
> * * * * * *
>
> "By the Organic Act of July 1, 1902, ch. 1369, "sec. 12, 32 Stats., 691, all the property and rights "acquired there by the United States are to be ad- "ministered 'for the benefit of the inhabitants "thereof.' It is reasonable to suppose that the atti- "tude thus assumed by the United States with regard "to what was unquestionably its own is also *its atti- "tude in deciding what it will claim for its own.* "The same statute made a bill of rights embodying "the safeguards of the Constitution, and, like the "Constitution, extends those safeguards to all. It "provides that 'no law shall be enacted in said Islands "'which shall deprive any person of life, liberty, or "'property without due process of law, or deny to "'any person therein the equal protection of the "'laws'" (Sec. 5).

This Philippine Government Act of July 1, 1902, was meant to carry out, in good faith, Article VIII of the Treaty of Paris as to vested rights. We maintain that the grant by the president and council of the town of Mabalacat to Rafael Laczon in 1873, pursuant to Book 4, Title 12, Law I, of the

Laws of the Indies above quoted, when once acted on by him, vested in him the right in and to the land in question. We challenge the Government to show to this honorable court any authority for the decision of the Supreme Court of the Philippines (5 Philippine Rep., 256, *supra*) that such municipal authorities "had no power to convey," or that the Law I of the Laws of the Indies, *supra*, authorizing the municipal authorities to make such conveyances, had ever been repealed up to 1873, the year of this conveyance. The elaborate, painstaking, and learned opinion of Mr. Justice Willard, in the case reported in 5 Philippine Reports, 256, was evidently intended to be a leading case. With characteristic thoroughness the learned justice gathers together quite a compendium of the royal orders and decrees governing land grants. On pages 541-542, he quotes Book 4, Title 12, Law I, of the Laws of the Indies, and from his clear and idiomatic translation, we invite special attention to the following:

> "to those who have labored and established a home on
> "said lands and who shall have resided in the said
> "settlement for the period of four years we grant
> "the right thereafter to sell and in every other man-
> "ner to exercise their free will over said lands as over
> "their own property."

This sort of legislation intended to open up and develop a country and encourage the people to cultivate the soil is not new. Such statutes almost invariably contemplate that after a certain period of raising crops on the land and making it productive the grantee is to own it absolutely. This is analogous to our homestead law upon the public lands, whereunder settlement and cultivation for five years gives complete title (U. S. Revised Statutes, sec. 2291).

Section 15 of the Philippine Government Act above cited is quite similar to this Spanish Law I of the Laws of the Indies. It provides that under circumstances similar to those contemplated by the Spanish statute the title shall vest after five years. The text of that section is as follows (32 Stats., part 1, p. 696):

"SEC. 15. That the government of the Philippine "Islands is hereby authorized and empowered, on "such terms as it may prescribe, by general legisla- "tion, to provide for the granting or sale and con- "veyance to actual occupants and settlers and other "citizens of said islands such parts and portions of "the public domain, other than timber and mineral "lands, of the United States in said islands as it may "deem wise, not exceeding sixteen hectares to any "one person and for the sale and conveyance of not "more than one thousand and twenty-four hectares "to any corporation or association of persons: *Pro-* "*vided*, That the grant or sale of such lands whether "the purchase price be paid at once or in partial pay- "ments, shall be conditioned upon actual and con- "tinued occupancy, improvement, and cultivation of "the premises sold for a period of not less than five "years, during which time the purchaser or grantee "cannot alienate or encumber said land or the title "thereto; but such restriction shall not apply to "transfers of rights and title of inheritance under "the laws for the distribution of the estates of dece- "dents."

All of our legislation concerning these islands shows a settled policy upon the part of the United States to recognize and protect all property rights in land, complete or inchoate, which existed at the time of the Treaty of Paris.

Article 1950 of the Spanish Civil Code for Cuba, Porto Rico, and the Philippines defines good faith thus:

"Good faith of the possessor consists in his belief "that the person from whom he received the thing "was the owner of the same and could convey title."

We submit there is no ground to question the good faith of any person in this chain of title. With the original grantee we have already dealt. The judge of the Land Court in his decision suggests that the purchase price of 400 pesos paid by Carrillo to Laczon in 1881 would indicate a lack of good faith. This does not follow. Prior to the grant to Laczon the land was undesirable; no one sought it and many reasons could exist to render its value small. We submit no con-

clusions against the good faith of the purchase can be properly indulged on such ground. As we do not know whether the brigands and cattle thieves had been entirely wiped out at that time, it would seem quite as probable that the price paid was small because the land was somewhat still infested with brigands, as that the price paid was small because the purchaser was acting in bad faith.

As to the language of the court in the case above quoted from 3d Philippine R., p. 540—

> "Whether, in the absence of any special legislation on the subject, a general statute of limitations, in which the State was not expressly excepted, would run against the State as to its public lands, we do not find it necessary to decide"

we adopt the language employed in the brief before this court by the eminent counsel for the plaintiff in error in the Cariño case—

> "So far from there being any doubt whether prescription ran against the Crown in the Philippine Islands under the general law, it would have required special legislation, wholly inconsistent with the general law, to produce any different result. No such law can be cited, for none exists."

The ruling of this court in that case has established that prescription runs against public lands in the Philippine Islands. So, in the case at bar, in order to come under the rule in the Cariño case, we have only to invoke section 1957 of the Spanish Civil Code relating to prescription through possession under color of title, and article 1960, the effect of which here is that this claimant may add the period of occupation of his predecessor in title to his own in counting up the ten years time. However, this is but a buttress to our title. Its cornerstone is the fact that the Spanish local municipal authorities granted this land to our predecessors in title, upon condition of his occupying and cultivating the same, and that to induce him to do so it promised him, by authority

of a statute then in force, full title at the end of four years. This, we insist, concluded the Spanish Government after these four years had vested indefeasible title in the grantee. If this title was not perfect, it was only voidable at the instance of the Spanish Government, or of some subsequent denouncer of the land. The moment the Treaty of Paris was finally ratified in 1899, this title and each several link thereof came under the protection of the second paragraph of article VIII of that treaty. Unless it be made to affirmatively appear to this court that Law I of the Laws of the Indies, above quoted, was no longer in full force and effect in 1873, the presumption that it was still in force in that year is conclusive. A Royal Order bearing date as late as 1862, cited in the case above mentioned in 5 Philippine Rep., 548, enjoins obedience to these same Laws of the Indies.

We come now to the regulations of June 25, 1880, and the widely different views of the meaning thereof entertained by the Philippine Supreme Court on the one hand, and this Honorable Court on the other.

Article 4, cited in 5th Philippine Rep., p. 549, provides that—

> "For all legal effects those will be considered pre-
> " scriptors * * * who may prove that they have
> " possessed the lands without interruption during the
> " period of ten years, by virtue of a good title and in
> " good faith."

The Spanish words translated as "good title" are *justo título*, and as hereinbefore indicated, we contend that they are equivalent to what we call "color of title."

The Insular Supreme Court (p. 550 of the volume cited) holds that persons included in this article "must seek an adjustment (*composicion*) and obtain a deed from the State (within the year prescribed in article 8 of said Regulations) and if they do not they lose all interest in the land." Construing the same law, however, this court in the Cariño case says:

"It is true that the language of articles 4 and 5 "attributes title to those 'who may prove' possession "for the necessary time, and we do not overlook the "argument that this means may prove in registra- "tion proceedings."

* * * * * *

"The words 'may prove' (*acrediten*), as well, or "better, in view of the other provisions, might be "taken to mean when called upon to do so in any "litigation. There are indications that registration "was expected from all, *but none sufficient to show "that for want of it ownership actually gained would "be lost.* The effect of the proof wherever made was "not to confer title but simply to establish it, as "already conferred by the decree, if not by earlier "law."

However this may be, the original grantee took under a valid grant, and on the faith thereof cultivated the land in dispute for a much greater number of years than the four required by law to give him title. To say that no interest whatever vested in him by reason thereof is erroneous. Moreover, it is entirely out of keeping with the prevailing attitude of this Government toward the natives of the Philippine Islands to construe the old Spanish laws thus strictly. The military authorities appear to have appropriated this land by mistake for a military reservation, supposing that because it was unoccupied at the time it was public land. They have, however, appropriated private property. Certainly the fact of such appropriation cannot affect the judgment here. The same condition of military reservation was shown in the Cariño case, wherein the petitioner's title was recognized and his right to recordation thereof affirmed.

Such, also, we submit, should be the just conclusion in the case at bar.

Respectfully submitted.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 37.

MARCELO TIGLAO, PLAINTIFF IN ERROR,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

REPLY BRIEF FOR PLAINTIFF IN ERROR AND APPELLANT.

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I.

The Government's brief (p. 70) states that Carrillo, who purchased from the original grantee of the pueblo or town grant, paid 400 pesos ($200.00) for land now worth at least $25,000, and adds, "This suggests how the parties actually viewed their title."

The suggestion is effectively answered from this record. It appears—

a. The original grant to Lacson was made as therein recited "for the reason that it was uncultivated land, and for the further reason that it was used by the brigands as a refuge, as well as by the cattle thieves and Negritos. * * * "

b. The petition of the present claimant in the Court of Land Registration, which was executed and apparently filed on February 5, 1904, recites (R., 1):

> "The property described was assessed in the last "assessment made for the purpose of collecting the "territorial tax, for $2,000.00, United States cur- "rency."

c. The affidavit of values, whereon the cause was brought to this court, states (R., 51)—

> "that according to the last tax revision of the year "1906, the value of the said land was fixed at 68,000 "pesos, Conant (P68,000), by the Board of As- "sessors of the municipality of Mabalacat and prov- "ince of Pampanga, Philippine Islands, and 74,800 "pesos, Conant (P74,800) by the Provincial Board "of Appeals; and that the actual value of this land "is 74,800 pesos, Conant (74,800), exclusive of the "improvements and buildings not belonging to the "plaintiff."

It is hence plain that the extraordinary rise in the assessed value of this land came many years after Carrillo's purchase; after the change of sovereignty and after the filing of this petition. It is hence both impossible and unjust to attack the good faith of Carrillo or the present claimant on such ground.

II.

The Record Facts.

The decision of the trial court (R., 7-8) states:

> "The following facts were brought out on the "hearing:
>
> "Leon Lacson, 43 years of age, and the son of "Rafael Lacson, testified that after securing the ces- "sion from the town of Mabalacat in 1873, his father "cultivated certain portions of the land—the clear

"parts—planting some sugar-cane and corn. In "1881, as already appears, the land was sold to Pedro "Carrillo and wife.

"Francisco de Guzman testified that he was 'per- "sonero' for Carrillo on the land for two years, culti- "vating portions of it; that Carrillo then ceased to "cultivate the land (1885) and that he, Guzman, "continued in charge of the land for Carrillo for some "years, to prevent people from cutting wood thereon. "He said the land was used for pasture, but that "while he was in charge of same people did not ask "permission of him when they pastured their cattle "on the land. He said the land had not been culti- "vated since 1885.

"Valentin Morales said that the land belonged to "Tiglao at present, but that he had not seen him "in possession of it. It appears that Tiglao simply "advised the witness and other persons that he had "purchased the land. The declarations of Ludovico "Narciso are to the same effect, except that he states "that in 1900 he asked permission of Tiglao to pas- "ture some carabaos on the land.

"Teodoro Locsin said that he cultivated portions of "the land as lessee for ten years after it had passed "to Carrillo, or until 1888. This declaration is in "conflict with the testimony of Guzman who was in "charge of the land as agent.

"We find, therefore, that portions of the land were "cultivated by Rafael Lacson between 1873 and "1881; that Carrillo cultivated certain parts until "1885; and that subsequent to that date the land "was practically abandoned, there being no further "cultivation and the public generally pasturing cattle "thereon without interference."

Elaborate argument is indulged on the Government's brief, to the point that neither on the writ of error nor the appeal herein are the facts as found below open to re-examination here. We apprehend that point is well taken, not so much upon the authorities cited in the brief, but because this court, at the present term, in *Reavis*, appellant, *vs. Fianza et al.* (decided November 1, 1909), has, upon

the equity suit there involved, expressly ruled that it will not re-examine the evidence and reverse the decree on the facts as well as the law. If that cannot be done in an equity cause, it, of course, cannot be done with a case originating in the Land Registration Court. Were it otherwise, we would press consideration of other indisputable facts found in this record and to which the trial court made no reference, such as its failure to add to the statement of Narcizo that he was mayor of Mabalacat in 1902, and collected the taxes on this land from Tiglao, the present claimant, in that year (R., 31), as well as other statements from the claimant's witnesses, showing community recognition of his ownership.

But we do insist that all the facts stated in the trial court's decision, *supra*, as established by the testimony, should be considered here, and to the result that they clearly show possession by the original grantee and his successors far exceeding the prescriptive period required by the Spanish law.

III.

Nature and Effect of the Grant.

The Solicitor General's brief discusses with fullness and great ability the Spanish law of the Indies, with resulting contention that the grant of this land to Lacson from the pueblo or town authorities of Mabalacat was inoperative to pass title, because such municipal authorities were without power to convey the same, the tract being of the Crown lands, and therefore subject only to grant by the King, through the Viceroy or Governor, unless a prior grant to the pueblo or town, from like source, appears. Asserting that such latter grant cannot be here presumed, it is further contended that in grants to a pueblo fee title thereto still remains in the Crown.

It is further argued that the Presidente, described in the law of the Indies as an essential personage in the making

of these grants, was an officer of high dignity, sitting as head of the Audencia, existing only in one or two principal cities of the Philippines, and hence exercising an office of much higher dignity and authority than the "Gobernadorcillo (Presidente)" of the town of Mabalacat, who with "the prominent men of the municipality being in session" joined in making the grant to Lacson here in question.

The diligence of counsel has doubtless exhausted all that can be found in White's New Recopilacion covering the laws of the Indies, for we frankly confess that our search through that valuable work has developed nothing material which opposing counsel has omitted printing upon the question here involved. It may well be that Law I, Book 4, Title 12, is limited to grants to Spanish settlers, within which class the unfortunate Lacson did not fall. These laws, however, are most ancient, following upon Spanish discoveries and dating, in some instances, as far back as the 16th century.

None the less, we have felt that the grant here in question was not justly subject to denial, when made by the mayor and prominent men of this important Philippine pueblo or town, and when acting, as the express recitals of the instrument show, with the Reverend Parish Priest thereof, who acted as both spiritual and temporal adviser to a people and a race subordinate in knowledge and education to those of Castilian blood who dwelt among them.

In other words, it may be presumed that the land here in question was, as the granting instrument recites, "within " this town situated in Labac and Mabatid" (R., 11), because the *locus* of the land appears to be thus frequently described in the subsequent conveyances and testamentary devises found in the chain of the present claimant's title, as well as the statement of its location set forth in the affidavit of values, *supra* (R., 51), as fixed "by the Board of Assessors of the Municipality of Mabalacat, Province of Pampanga," etc., all of which stands without challenge on this record. Nor may it be justly challenged that the land was wild and

uncultivated, because the reason for the grant, as expressed in the instrument of conveyance, was "that it was uncultivated land, and for the further reason that it was used by "the brigands as a refuge, as well as by the cattle thieves and "the Negritos;" nor that the sole condition of the grant was both expressed therein and such condition performed, the grant being made (R., 11) "with the sole condition that he "will make himself a resident of this town, otherwise not to "permit him to take possession of said land, to which condition the petitioner willingly agreed, and *registered himself as a resident of this town.*"

Furthermore, the claimant's petition for registration (R., 2) sets forth with full particularity "the names and addresses of the owners of the adjoining properties," some 24 in number, none of whom appeared in opposition or claimed any interest in the land described in such petition. Indeed, we may add that this same petition states the occupation of the land, in part, by a military post, and that another part is occupied by tracks and a station "belonging to the "Manila to Dagupan Railroad, owned by a company which, "at the present time, is managed and directed by Mr. Horace "L. Higgins."

No opposition appears from the railroad company, the United States military authorities and the insular government of the Philippine Islands appearing only in opposition. As by the terms of the petition the property is occupied only in part by the military reservation, such failure of all other cited parties, including the railroad company, demonstrates absence of all other adversary claim, and hence tacit community admission of the right of the petitioner, fully in keeping with the statement of his neighbor, Valentine Morales (R., 29-30), "that even to the smallest children know that "it was bought by Marcelo Tiglao; even the carabao herders "recognize Marcelo Tiglao as owner of that land."

With all these surrounding circumstances, in which community knowledge is an important element, especially in an

agricultural region, we have searched for the more recent legislation of the Spanish sovereignty, which would lift this action of the town authorities of Mabalacat above the charge of mere usurpation of royal prerogative or ownership, and to relieve the case from the apparent charge that the municipal authorities on the one hand and this Filipino farmer upon the other were in fact guilty of giving or receiving a title even to this wild and thief-infested tract without any semblance of law therefor. In that view we invite the court's attention to the work of Mr. Reynolds on Spanish and Mexican Land Laws, p. 83, headed, "Comp. Laws, Vol. I, P. 397, No. 107, decree of January 4th, 1813."

We print the entire decree, as follows:

"COMP. LAWS, VOL. I, P. 397, No. 107.

"DECREE OF JANUARY 4TH, 1813.

"On reducing the vacant and other common lands to
" private ownership: Tracts granted to the defend-
" ers of the country and to citizens who are not
" proprietors.

"The general and extraordinary cortes, considering
" that the reduction of the common lands to private
" ownership is one of the measures that the welfare
" of the towns and the development of agriculture
" and industry most demand, and desiring at the
" same time to afford assistance to the public needs,
" with this class of lands, a reward to the worthy de-
" fenders of the country and help to those citizens
" who are not proprietors, decrees:

"I. All public or crown lands, and those of the mu-
" nicipal domains and revenues with woodland or
" without, both in the peninsular and adjacent
" islands and in the provinces beyond the sea, except
" the necessary commons of the towns, shall be re-
" duced to private ownership, care being taken in the
" case of those of municipal domains and ownership
" that their annual revenues be supplied by the most
" timely means, which, on the proposal of the pro-

"vincial deputations, shall be approved by the "Cortes.

"II. In whatever manner these lands are distrib- "uted, it shall be with full rights of property and "by boundaries, in order that their owners may fence "them (without prejudice to valleys, cross-roads, "watering places and servitudes), enjoy them freely "and exclusively, and assign them to the use or cul- "tivation that may be most convenient to them; but "they shall never entail them, nor at any time nor "by any title transfer them in mortmain.

"III. In the alienation of said lands the residents "of the towns, within the limits of which they are "situated, and the joint holders in the enjoyment of "said public lands shall be preferred.

"IV. The provisional deputations shall propose to "the Cortes, through the regency, the time and the "terms in which it may be most convenient to carry "out this provision in their respective provinces, ac- "cording to the circumstances of the country, and "the lands it may be indispensable to preserve for the "towns, that the Cortes may decide what is best "adapted for each territory.

"V. This matter is recommended to the zeal of "the regency of the Kingdom and to that of the "offices of the two Secretaries of Government, that "they may promote it and enlighten the Cortes when "they forward to it the estimates of the Provincial "Deputations.

"VI. Notwithstanding what is provided the half "of the public and crown lands of the Monarchy, "excepting town commons, are reserved, in order "that wholly or in the part that may be considered "necessary, they may serve as a mortgage for the pay- "ment of the national debt, and preferably for that "of the credits the residents of the town to which the "lands belong hold against the nation; and among "these credits the first place shall be given to those "that were incurred for supplies for the national "armies or war loans, which said residents may have "made since May 1st, 1808.

"VII. When this half of the public and crown "lands is alienated, or the part it may be considered

"necessary to hypothecate, the residents of the re-
"spective towns and the joint holders in the enjoy-
"ment of said lands shall be preferred; and in the
"case of both the properly liquidated credits they may
"hold for said supplies and loans shall be received
"in payment at their full value, and, in the absence
"thereof, any other legitimate national credits they
"may have.

"VIII. In said half of the public and crown lands,
"there must be included and computed the part that
"has already been justly and legally alienated, in
"some of the Provinces for the expenses of the pres-
"ent war.

"IX. Of the remaining public and crown lands, or
"of the farming lands of the municipal domains and
"revenues, a tract of those most suitable for cultiva-
"tion shall be given to every captain, lieutenant or
"sub-lieutenant, who, because of his advanced age,
"or because he has been disabled in the military
"service, may retire with proper authority, without
"dishonor, and with proper documents to show his
"honorable service; and the same to every sergeant,
"corporal, soldier, trumpeter and drummer, who, for
"the same reasons, or because he has served out his
"time, obtains his final discharge without bad char-
"acter, whether the one or the other be citizens or
"foreigners, provided, there be lands of this class
"in the districts where they fix their residence.

"X. The tracts that are given to officers and sol-
"diers in every town shall be equal in value in pro-
"portion to the quantity and character of the same,
"and greater or less in some countries than in others,
"according to the character of the lands and accord-
"ing as there is a small or large amount thereof.

"XI. The allotment of these tracts shall be made
"by the constitutional common councils of the towns
"to which the lands belong, as soon as the parties in
"interest file with them the documents that show
"their good service and retirement, and the town
"attorneys shall be heard briefly and administra-
"tively in everything and without costs or fees of any
"kind being required. The proceedings shall then

" be forwarded to the provincial deputation that it
" may approve it and repair any grievance.

"XII. The grant of these tracts, which shall be
" called *patriotic reward*, shall not be extended for the
" present to any other individuals than those who
" serve or may have served in the present war, or in
" the pacification of the actual disturbances in some
" of the provinces beyond the sea. But it includes
" the captains, lieutenants, sub-lieutenants and troops,
" who, having served in one or the other, have retired
" without dishonor and with proper authority, be-
" cause they have been disabled or incapacitated in
" action in war, and in no other way.

"XIII. It also includes individuals not in the mili-
" tary service, who, having served in detachments or
" contributed in any other way to the national de-
" fense in this war, or in the disturbances in America,
" have been or may be disabled or incapacitated as
" the results of action in war.

"XIV. These favors shall be granted to the sub-
" jects referred to, although they may be in the en-
" joyment of other rewards for the services and
" actions mentioned.

"XV. Of the same remaining public and crown
" lands those most appropriate for cultivation shall be
" parceled out, and to every resident of the respective
" towns that asks for it and has no other land of his
" own, there shall be given gratuitously and by lot,
" and for once, a tract in proportion to the amount
" of lands, provided the total of lands thus distributed
" shall not in any case exceed the fourth part of said
" public and crown lands; and if the latter are not
" sufficient, the tract shall be given from the farming
" lands of the municipal domains and revenues, and
" in such case a redeemable rent (canon) shall be
" imposed upon it equivalent to the revenue from the
" same for the five years to the end of 1817, in order
" that the municipal funds may not fall off.

"XVI. If any of those favored by the preceding
" article should, for two consecutive years, fail to pay
" the rent, the tract being part of the municipal do-
" mains, or held on lease, it shall be given to another

"more industrious resident who has no land of his "own.

"XVII. The proceedings on these grants shall also "be had by the common councils without cost and "the provincial deputations shall approve them.

"XVIII. All the tracts granted under Articles IX, "X, XII, XIII and XV, shall be with full rights of "property for the grantees and their successors in "the terms and with the faculties expressed in Arti-"cle II; but the owners of these tracts shall not "alienate them before four years from the time they "were granted, nor ever subject them to entail nor "transfer them at any time or by any title in mort-"main.

"XIX. Any of said grantees or their successors who "establishes his permanent residence on said tract "shall be exempt for eight years from every tax or "impost on that land or its products.

"XX. This decree shall be circulated not only in "all the towns of the monarchy, but also among all "the national armies, and shall be so published in "all of them as to come to the notice of all the indi-"viduals that compose them."

As clearly appears by Section 1, this decree of 1813 applies equally "in the Provinces beyond the sea," and its obvious purpose was, as its title declares, to reduce "the vacant and other common lands to private ownership." The decree clearly contemplates that allotments (XI) both to officers and soldiers, and then of the remaining lands to residents of the respective towns that ask for it, should be made "by the constitutional common councils of the towns to which the lands belong" * * *

That the grants were thus to be made "by the constitutional common councils of the towns to which the lands belong" is made still more certain by the express language of Article XVII, which directs that—

"The proceedings on these grants shall also be "had by the common councils without cost and the "Provincial Deputations shall approve them."

And by the succeeding Article (XVIII) all such grants were to be made

> "with full rights of property for the grantees and "their successors in the terms and with the faculties "expressed in Article II; but the owners of these "tracts shall not alienate them before four years "from the time they were granted, nor ever subject "them to entail nor transfer them at any time or by "any title in mortmain."

From the date of this decree in 1813, to the grant to Lacson here in question, in 1873, there is a period of sixty years. During all that time, it may well be presumed that this wild, uncultivated and savage infested tract within the town of Mabalacat was not sought by any one. And yet, when applied for by Lacson in 1873, it was granted to him for the purpose of cultivation, he was required to and did become a resident of the town, and the undisputed finding is that he so remained in possession, and in the cultivation of the land from 1873 to 1881, when he sold to Carillo.

Now, it may be said, that there is nothing in this record to show that the grant thus made to Lacson by the municipal authorities of the town of Mabalacat was fully approved by the superior authorities. That is true, but, as we shall presently insist, the grant, accompanied by residence and followed by possession and actual cultivation, met all the conditions imposed by this decree of 1813, and as such grants were clearly authorized to be so made by the municipal authorities, it beyond question created that "just title" which the law and the regulations of 1880 describes on our former brief (pp. 9-12) as forming the clear basis for prescriptive title by occupancy thereunder for a period of ten years.

IV.

THE GRANT OF 1873, FROM THE MUNICIPALITY OF MABALACAT, AND THE CONVEYANCE THEREUNDER, ESTABLISHED "JUST TITLE" WITHIN THE MEANING OF THE REGULATIONS AND DECREE OF 1880.

The relevant portions of the regulations are:

> "1. There shall be considered as owners, for all "legal purposes, of the lands in question, those who "may establish that they have possessed the same "without interruption *during ten years* under just "title and in good faith.
>
> "2. Equally there shall be considered as owners "those who, lacking title, may establish that they "have possessed the said lands without interruption "for 20 years, if the same are found under cultiva- "tion, and for 30 years if the said lands are found un- "cultivated; and
>
> "3. The interested parties who are not found in- "cluded in the two preceding provisions *may legalize* "their possession *and, therefore, acquire ownership* "of the said lands, by means of adjustment in ac- "cordance with the price at the original adjudication, "or at the time of the entry thereon if cultivated "lands are in question, and with the price they may "have at the time of the claim, if they are uncultiv- "vated lands."

Following this report from the council, the royal decree confirmed and approved the attached regulations. The relevant parts thereof are as follows:

> "Art. 4. For all legal effects those will be consid- "ered proprietors of the royal lands herein treated "who may prove that they have possessed the lands "without interruption during the period of ten years "*by virtue of a good title and in good faith.*
>
> "Art. 5. In the same manner, those who *without* "*such title deeds* may prove that they have possessed "their said lands without interruption for a period "of twenty years, if in a state of cultivation, or for

"a period of thirty years, if uncultivated, shall be "regarded as proprietors thereof. In order that a "tract of land may be considered cultivated it will "necessary to show that it has been broken within "the last three years.

"Art. 6. Interested parties *not* included within "the two preceding articles may legalize their pos- "session and thereby acquire the full ownership of "the said lands, by means of adjustment proceedings, "to be conducted in the following manner." * * *

It is contended on the Government's brief that the words "just title" must be here held to mean a title which is perfect and valid in all respects. That is manifestly wrong, for no perfect *allodium*, or fee title, could, in any possible view, need the aid of prescription to sustain it. The decisions of this court fully sustain our contention.

Thus, in *Davis vs. Gaines* (104 U. S., 386-400), it was said:

"To entitle a party to claim the benefits of this "provision of this or any other prescription, it is "made necessary by the jurisprudence of Louisiana "that he should have acquired the immovable in "good faith and by a just title. By the term 'just "title,' in cases of prescription, is not meant that "which has been derived from the true owner, but "that which has been received from any person "whom the possessor honestly believed to be the true "owner, provided it were such as to transfer the "ownership of the property; that is, such as by its "nature would have been sufficient to transfer the "ownership if it had been derived from the real "owner, such as a sale, exchange, legacy, or donation. "Arts. 3484 and 3485, Civil Code; *Pike v. Evans*, "94 U. S., 6."

So, in *United States v. De la Paz Valdez de Conway* (175 U. S., 60), the court, in construing the proviso to section 13 of the Private Land Claims Act of March 3, 1891, which provided that "no claim shall be allowed that shall inter-

"fere with, or overthrow, any just or unextinguished In-"dian title or right to any land or place," aptly said, p. 70:

> "3. That the Indian claim or title is a 'just and "'unextinguished' one within the meaning of sec-"tion thirteen, subdivision two, of the act is shown "by the fact that such title was confirmed by Con-"gress. By the word 'just' in this connection, is "meant only a title which is good upon its face, or "not manifestly frivolous—not one which shall ulti-"mately turn out to be valid."

In *Texas & Pacific Railway Co. v. Smith,* 159 U. S., 66, the case turned upon the definition of a "just title," as expressed in the Louisiana Civil Code. At page 69, the opinion quotes therefrom thus:

> "Article (3450) 3484. By the term just title, in "cases of prescription, we do not understand that "which the possessor may have derived from the "true owner, for then no true prescription would be "necessary, but a title which the possessor may have "received from any person whom he honestly be-"lieved to be the real owner, provided the title were "such as to transfer the property."

The opinion then recites at length many cases ruled in the Supreme Court of Louisiana, and quotes from some of them, including (p. 71) *Gliddens, Executor, v. Mobley:*

> "A tax deed was shown, and it was held sufficient "for the purpose of prescription, the court saying: "'Where the deed is perfect in form, and the defect "'is want of right or authority in the officer to make "'it and not in the manner of making it, the knowl-"'edge that the officer had no right to make the sale "'is not brought home to the buyer.' In *Barrow v.* "*Wilson* the defendant claimed two tracts and the "title under which he claimed prescription was as to "one, a patent from the State for land as swamp land, "and the other, a tax deed, and the conclusions were "as in the other cases, the court saying, in reference

"to the patent from the State: 'Upon its face that
"'muniment of title is transferable of the ownership
"'of the property which it purports to convey.'"

And in reply to the cases cited on the opposing brief, ruled in this court under the Private Land Claim Act of 1891, we quote the language of this court in *Hayes v. The United States* (170 U. S., 647, 648):

"By the first subdivision of the thirteenth section
"of the act creating the Court of Private Land Claims
"that court and this court on appeal are expressly
"prohibited from allowing any claim under the act
"'that shall not appear to be upon a title lawfully
"'and regularly derived from the government of
"'Spain or Mexico, or from any of the States of the
"'Republic of Mexico having lawful authority to
"'make grants of land.' This manifest limitation
"upon the power of the court in passing upon the
"validity of an alleged complete grant requires that
"the court shall not adjudge in favor of validity
"unless satisfied from the inherent evidence con-
"tained in the grant, or otherwise, of an essential pre-
"requisite to validity, viz., the authority of the
"granting officer or body to convey the public do-
"main.

"In this respect the act of 1891 is materially differ-
"ent from the statutes construed in the *Arredondo*
"*case*, 6 Pet., 691. That case concerned a grant by
"the king of Spain of land in Florida. The statutes
"under which the court exercised jurisdiction en-
"joined, among other things, as guides or rules of
"decision in passing upon a claim, 'the stipulation of
"'any treaty, and proceedings under the same; the
"'several acts of Congress in relation thereto;' etc.
"In view of provisions of this character, the court,
"beginning on page 722, devoted much attention to
"the question, 'Whether the several acts of Congress
"'relating to Spanish grants do not give this grant
"'and all others which are complete and perfect in
"'their forms, "legally and fully executed," a greater
"'and more conclusive effect as evidence of a grant
"'by proper authority.' Reviewing such acts, the

"conclusion was reached that it was the intention of "Congress that a claimant should not be required to "offer proof as to the authority of the officials exe- "cuting a public grant, but that the court should, "in deciding upon a claim, assume as a settled prin- "ciple that a public grant is to be taken as evidence "that it issued by lawful authority (p. 729). And "in the *Peralta case*, 19 How., 343, in a proceeding "under the act of March 3, 1851, relating to lands in "California, the doctrine of the *Arredondo case* was "applied.

"But in the act of 1891 the court is required to be "satisfied not simply as to the regularity *in form*, but "it is made essential before a grant can be held "legally valid that it must appear that the title was "'lawfully and regularly *derived*,' which imports that "the court must be satisfied, from all the evidence, "that the official body or person assuming to grant "was vested with authority, or that the exercise of "power, if unwarranted, was subsequently lawfully "ratified."

The succeeding portions of the opinion discuss, in the light of this strict requirement of the Private Land Claims Act of 1891, the effect of a conveyance made without lawful authority, but the distinction is obvious between that line of cases and the one at bar in this regard.

Under the Treaty with Spain, whereby the United States acquired the Philippine Islands, it is by Article VIII (30 Stats., p. 1758) provided:

"And it is hereby declared that the relinquish- "ment or cession, as the case may be, to which the "preceding paragraph refers, cannot in any respect "impair the property or rights which by law belong "to the peaceful possession of property of all kinds, "of provinces, municipalities, public or private estab- "lishments, ecclesiastical or civic bodies, or any other "associations having legal capacity to acquire and "possess property in the aforesaid territories re- "nounced or ceded, or of private individuals, of "whatsoever nationality such individuals may be."

Thus, individual property interests in the Philippines fall within the rule and line of reasoning approved in the *Arredondo* case, *supra,* for to this writing Congress has not applied the strict rule prescribed in the Private Land Claims Act of 1891. Indeed, the conditions of titles in the Philippine Islands must, in all conscience, forbid the application of such a rule, and as the recent decisions of this Court abundantly attest.

We hence submit that the presumption of authority under the doctrine of the *Arredondo* case, *supra,* is applicable here, and not the rule of strict proof establishing the authority of the officer making the grant, as was enforced in the Hayes case, *supra,* because of the mandatory requirement of the Private Land Claims Act of 1891 in that regard.

The learned counsel cites against us the provisions of the Spanish Civil Code, sections 1952, 1953, and 1954 (admittedly not operative in the Philippines in 1880 nor until 1889), as requiring from this claimant a perfect record title as the basis of any right by prescription or possession. But we read the cited provisions as in harmony with the section of the Louisiana Code quoted *supra* in *Texas & Pacific Ry. Co. v. Smith,* 159 U. S., 66, 69, for both in reason and on precedent it cannot be contended that prescription is necessary to aid a full fee simple or allodium title. Such construction would be foreign to our own law and certainly ought not to be charged against the more refined and more ancient civil law.

But it is insisted that the regulations and decree of June 25, 1880, quoted *supra* are ineffective against this claimant, because at the time of their adoption the possession of the original grantee, Lacson, and of Carrillo, his immediate grantee, had not then run for ten years. To this contention there are two answers:

1st. There is nothing in the language of the regulations of 1880 or the decree thereunder which shows that the purpose was to fix the date from which, and from which alone,

the period of prescription should *retroactively run. Contra,* and as in all countries where the civil law obtains, the occupant is not disturbed until there has been positive action by the government or (and this is practically the absolute rule) until denouncement by another. This is the rule in the Mexican law, as is well illustrated in *Hornsby et al. v. United States,* 10 Wall., 224, 240. And in this regard the Mexican law had its root firmly in the civil law wherefrom it was taken.

2d. Article VIII of the decree of June 25, 1880, cited on page 76 of the opposing brief, in providing the period of one year for application for adjustment thereunder, and upon default then the sovereign, "availing itself of its right, shall "recover the property of the State, and shall proceed to sell "at public auction," etc., was not self executing.

The opposing brief (p. 78) admits that the time for application to adjust under this decree of 1880 was extended down to December 28, 1887. At the time of the original decree of 1880 seven years of possession and cultivation had already accrued to Lacson. But it is contended that the latter decree of February 13, 1894 (Brief, pp. 79-80), forecloses all right of the claimant or his predecessors in interest. We do not so read that decree.

The argument upon the decree of February 13, 1894 (Brief, pp. 79-83), proceeds upon the basic assumption that the claimant's title was not within the protection of the regulations and decree of 1880, because the prescription of ten years had not fully run when that decree was promulgated. But if the assumption be erroneous (as we insist) the entire argument founded thereon must fail. In Carino *v.* U. S. (212 U. S., 449), the same contention was made, but the court said (p. 462):

> "Article 8 provides for the case of parties not asking an adjustment of the lands of which they are unlawfully enjoying the possession within one year, and threatens that the treasury 'will reassert the ownership of the State over the lands,' and will sell

> at auction such part as it does not reserve. The applicant's possession was not unlawful and no attempt at any such proceedings against him or his father ever was made."

So here, there is the finding of actual cultivation from 1873 to 1885 (R., 8), and possession thereafter continuing for some years by Carrillo (R., 7). The decree of 1880 was hence in force for years, while the claimant's predecessors in title were in possession, and no proceeding against them thereunder was ever made. The presumption may hence be justly indulged that inquiry being made by the proper authorities, and over ten years of actual occupancy being ascertained, such proceeding was advisedly not brought because thereof. Certainly a remedial act would be thus construed under our law, and the same just conclusion can be as readily attributed to the Spanish authorities in the execution of this law. The prescriptions recognized by the Spanish Philippine law are expressly found by this court in the Carino case, *supra,* to run "even against crown lands." When, then, section 41 of act 190 of the Philippine Commission, known as the Code of Civil Procedure, and fully quoted on our original brief (p. 14), in terms recognizes ten years' actual adverse possession under *claim* of ownership by "occupancy, descent, grants, or otherwise," and without further condition, we fail to see wherein *that* statute should not have equal application here. The opposing brief contends that a *later* statute qualified this provision in such manner as to exclude the United States therefrom except in a limited class of cases, and that the registration act (sec. 52, Act 926, 3 Public Laws Philippine Commission, 72) limited the term "for a period of ten years next preceding the taking effect of this act." * * * But this registration act in terms excepted the Government from the operation of such prescription; the allegation of the petition (R., 1) that there was "no person claiming any right or interest in the same" was proven by the subsequent non-

appearance of any other private claimant to oppose the petition, thus leaving in full operation the former prescriptive act (sec. 41, Act 190, 1 Public Laws Philippine Commission, 384), the language whereof, in legal effect, is as broad as the Spanish decree of 1880. And certainly *after* such enactment the limitation could not be reopened and the matter set at large. Statutes of limitation cannot be so construed, for when the period has already run in respect of real property under an existing statute the right is vested, and no subsequent change in the statute can divest or impair it.

The good faith of the parties in the chain of title is not open to just challenge. The original grantee, upon the facts set forth in the decision of the trial court, certainly sought, obtained and held the land in good faith. His grantees, Carrillo and wife, paid a valuable consideration therefor. Its amount may well be considered as representing the then fair value of the land for it was evidently then outlying land of the town, producing small crops and the dwelling and warehouse thereon was doubtless of nipa—such as would be erected by a native farmer and of little value. The present claimant paid 1000 pesos therefor in 1898 (Finding, R., 7). The land was in 1903 assessed at $2,000 (Pet. R., 1). Lacson cultivated the land from 1873 to 1881, Carrillo, his grantee, from 1881 to 1885, and the latter's agent (Guzman), thereafter "continued in charge of the land for "Carrillo for some years, to prevent people from cutting "wood thereon."

Decision Trial Court (R., 7).

Carrillo devised to his wife, and his wife, in turn, devised the property to her nieces, Maria and Rosa Juarez, as "uni-"versal heirs," and the latter (Rosa), in turn, conveyed in 1898 to the present claimant. These original conveyances are produced, *and no challenge is made of the authenticity of the grant from the municipality to Lacson or of the subsequent conveyances.*

Remembering that during all of those years no registry law existed, the production of these instruments in the order of ownership by the present claimant, is in itself indicative of initial and continuing good faith. It is noted that the deed to Tiglao was acknowledged at the town hall of Mabalacat before the representative of the "Revolutionary Government," thus indicating that the revolution which had been actively in progress for some years had obtained control in that vicinity and necessarily seriously disturbed agricultural development. When quiet was restored and peace was followed by American occupation, the present claimant promptly produced his proofs before the Land Registration Court after its organization. We submit there is nothing in this record whereon to challenge the claimant's or his predecessor's good faith nor to deny to him the benefit thereof.

Good faith and "just prescriptive right" here existing is made plain. By the very terms of Law 14, Title 12, Liber 4, of the Recopilacion of the Laws of the Indies providing for the return of crown lands improperly held, it was provided:

> "And to those who are in possession by virtue of "proper deeds and receipts, or by *virtue of just pre-* "*scription, shall be protected,* and all the rest shall "be restored to us to be disposed of at our will."

In the memoranda sent us by the former counsel in this cause (Hon. Rafael Palma, now a member of the Philippine Commission), that distinguished lawyer adds to foregoing citation the statement that—

> "The just prescription is recognized by this law, "and such, according to the Spanish laws, might be "ordinary with a just title and in good faith in the "possession for the period of 10 years, and extraordi- "nary for the period of 30 years without a just title "or good faith. (See the Laws of the Partidas, the "Spanish Civil Code of '89 and the Mortgage Law of "the year '93.)"

The finding below is that Lacson and his immediate grantee (Carrillo), were cultivating the land from 1873 to 1885, and Carrillo's agent remained in charge of the property for several years thereafter (R., 7), a period outrunning the prescription of ten years.

V.

The final contention (Brief, pp 89–91) that appellant was a co-tenant of Maria Paz Juarez in this land and could not ask registration of title without her joinder therein, is not sound. The trial court (R., 7) found that Carrillo and his wife "left their property in undivided parts to Marie Paz Juarez and Rosa Juarez" and adds that while the record does not show what became of the interest of Marie in the property one witness testified "that there had been a partition between the two sisters, in which partition this property corresponded to Rosa Juarez." This witness (Lintag) testified (R., 29) that he was the husband of Rosa; that Marie delivered to Rosa the title deeds, and that "there was a verbal agreement made between the two sisters."

At common law, and in a number of the States parol partition followed by possession (as here, R., 29–30) is effective, and in equity is very generally considered as binding upon the parties when followed by possession and exercise of rights of exclusive ownership.

Am. & Eng. Ency. Law, Title Partition, Vol. 21, pp. 1137–1139.

The statute of frauds applies to protect third parties, but between copartners the partition is hence binding. When this appellant petitioned for registration, therefore, it was manifestly right and proper that he should assert his own claim as exclusive and adverse to all other parties. He claimed under a conveyance from Rosa Juarez, executed November 7, 1898. His petition was filed in February, 1904,

and Marie never appeared to challenge his exclusive ownership under the conveyance from her sister, or to assert any interest whatsoever in the land. Certainly the registration act cannot be construed to *compel* this appellant to join as petitioner one who had so clearly and fully surrendered her interest.

We submit the judgment should be reversed.

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Attorneys for Plaintiff in Error and Appellant.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 37.

MARCELO TIGLAO, PLAINTIFF IN ERROR AND APPELLANT,

vs.

THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS ET AL.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

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I.

We do not understand that the decree of the Spanish Cortes, enacted January 4, 1813, and quoted in full in our reply brief (pp. 7-11), ceased to be regarded as effective in 1814, as suggested by opposing counsel. It is published in Mr. Reynolds' work without any such notation, but in that author's preface, in speaking thereof, he refers to Hall's Mexican Law. There we find the same decree set out in full, and with the following addition (p. 48) by that author:

> "109. *Abrogation of the decree, Various decrees.* "The foregoing decree was abrogated by a royal "cedula of the Eighth of July, 1814. In 1818 the "sale of the vacant and crown lands was again or- "dered, to pay the interest and the funding of the

> "public debt, and afterwards in 1819, rules were "determined upon for the execution thereof. But "in 1820, the constitutional régime inaugurated in "1812, being reestablished, the distribution of the "vacant crown lands was again ordered by the cortes "on the eighth of November of that year; and others "were issued on the twenty-ninth of June, 1821, "and on the same date of the year of 1822. These "decrees subsequent to that of January 4, 1813, are "not considered as essential to be given herein at "length."

The decree, by its terms (sec. 1), applies "both in the "Peninsula and adjacent islands, and in the provinces "beyond the sea." Its operation may hence be justly presumed to have been as far-reaching, in respect of territory, as its terms so clearly import. We have not contended that the original grantee here, Lacson, took absolute title thereunder, because it is not shown that his grant was ever approved by the superior authorities, but, as contended on our reply brief, we do submit that a grant thereunder would constitute, in full measure, that "just title" on which prescriptive occupation would run.

Moreover, as shown upon its face, the grant was approved and signed by the Rev. Parish Priest, who acted as both spiritual and temporal adviser in the administration of the affairs of this important pueblo. The town of Mabalacat was certainly in existence as early as 1803, for in the 1st Philippine Census Reports, vol. 1, page 436, is found a quotation from the work of the Augustinian Friar, Father Martinez de Zuniga, wherefrom the fact is stated (p. 426):

> "Zuniga's description of the upper portion of the "central plain of Luzon makes it quite clear that this "great plain, covered today by the jurisdiction of "Nueva Ecija and Tarlac, was then almost unpopu-"lated. Its few settlements were missions, the nearest "of which was Mabalacat, which had 124 tributes, "a population of about 600."

Adverting to the fact that the grant here in question from the town authorities of Mabalacat was viseed or approved by the reverend parish priest of the town, as appears by its recitals and his rubricated signature thereto, it is well to here note the extended and active temporal power and offices existing and filled by the parish priest. This is clearly stated in a note on page 366 of Vol. 1 of the Philippine Census, quoting the statement of Father Juan Villegas, the provincial head of the Franciscan friars, made before the Philippine Commission in 1900. Inspection thereof will show the activities and the powers of the parish priest in each of these municipalities were of the most extended and important kind. These varied and multiplied duties demonstrate that the parish priest, by his education, training and experience, was necessarily well advised of all the municipal functions, powers and duties, for indeed he was undoubtedly *the* learned man of the municipality and called upon to discharge executive duties of the most varied sort.

That the land was a part of this Indian pueblo and subject to the disposing power of the authorities may well be presumed from its location, wild and savage-infested character; the action of the municipal authorities in making the concession, and the continuous claim of title thereunder from 1873 until the change of sovereignty without any apparent challenge by governmental authority.

Stress is laid upon the asserted lack of power of the municipal authorities of this Indian pueblo to make grants or concessions to the residents thereof. But it must be borne in mind that this land was part of this Indian pueblo. It was petitioned for and granted as "a land in this town situated in "Labac and Mabatid." It was hence granted as land within the Indian pueblo. Presumably the grant was in full accord with Indian law and custom. It is certain that no attempt was made to grant it as crown land by the Spanish Government, and from the date of the grant in 1873 to the change of sovereignty in 1899 the record does not disclose any effort

on the part of that government to avoid the grant or make sale of the land to any one. It was a tract of waste land within the pueblo and the peaceable possession thereof by the grantee and his successors, undisturbed by State claim of ownership, argues most strongly against the contention that the grant to Lacson was wholly without authority when exclusive possession of lands within these Indian pueblos was recognized and protected.

Their town government is also stated in volume 1, Census Reports of the Philippine Islands, 365, 366, quoted on the Government's brief, page 30, but we add thereto what is omitted from that quotation, and which immediately follows it (p. 366):

> "In the Laws of the Indies, Vol. VI, Title II, "law 16, is prescribed the power of the Indian "alcaldes; their jurisdiction was limited to the ex- "amination, arrest, and imprisonment of Spanish "residents, but they had power to imprison an Indian "for a term of one day and to give him from six to "eight lashes for failing to attend mass on feast days "or for getting drunk: the alcaldes under the provis- "ions of the law referred to were charged with the "administration of municipal affairs. Inasmuch as "Spaniards were prohibited from taking up their resi- "dence in towns occupied by Indians, the law referred "to was limited in its application to the Indian towns. "The other towns, wherein Spaniards resided, organ- "ized their municipal councils in the same manner "as was done in Manila."

With this distinct recognition of exclusive Indian right of occupancy within their own pueblos, disposition of the pueblo lands to Indians resident therein by the pueblo authorities accords with the recognized policy of Spain to so recognize the rights of the Indians in protection of their property against appropriation by Spaniards, and to confirm their possession accordingly. Such is the express language and broad spirit expressed in the court's opinion in the

Carino case (212 U. S., 449). Its application here does not violate the language of Spanish law, but does apply the spirit of the Treaty of Paris, which covenants recognition of the "peaceful possession of property of all kinds" of "private individuals," for certainly the Filipinos are "individuals," whatever their political status otherwise may or may not be.

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In the Supreme Court of the United States.

OCTOBER TERM, 1909.

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v.
THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS et al., defendants in error and appellees.
No. 37.

IN ERROR TO AND ON APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR DEFENDANTS IN ERROR AND APPELLEES.

STATEMENT.

It is admitted that the lands of which appellant petitioned the Court of Land Registration to register him as the owner were in 1873 public lands, and appellant bases his claim upon an alleged grant on July 13, 1873, of such public lands to one Rafael Lacson, appellant's alleged predecessor in title, or upon prescription of ten years or thirty years against

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the public by Rafael Lacson and others claiming under him.

The specific claims of the appellant are:

1. That the supposed grant of these public lands by the "Gobernadorcillo" and "Principales" of the town of Mabalacat to Rafael Lacson, on July 13, 1873, was authorized by law 1 of book 4, title 12, of the Laws of the Indies.

2. That such grant, if not authorized by law 1, was authorized by law 8 of book 4, title 12, of the Laws of the Indies.

3. That if the supposed public grant of July 13, 1873, was unauthorized and invalid, still appellant has a title by prescription through possession of the land by some of those from whom appellant deraigns title for ten years with what the pertinent Spanish statutes call "just title" (justo título) and in good faith.

4. That appellant has title by prescription through ten years of actual adverse possession under section 41 of act No. 190 of the Philippine Commission, enacted on August 7, 1901, or under paragraph 6 of section 54 of act No. 926 of the Philippine Commission, enacted on October 7, 1903.

5. That if appellant has not title through ten years' prescription, he has it by prescription through thirty years' possession.

All of these contentions are denied by appellees; and, in addition, some affirmative defenses are offered which will be stated in the course of the argument.

The chain of appellant's alleged title is nowhere stated with full and accurate detail in appellant's brief; and it is therefore given here—

(1) The alleged public grant was made by the gobernadorcillo and principales of the town of Mabalacat on July 13, 1873, to Rafael Lacson (Rec., p. 11).

(2) Rafael Lacson conveyed to Don Pedro Carrillo and Dona Edilverta Juarez, his wife, on May 6, 1881; either the original or a copy of the aforesaid grant of July 13, 1873, being annexed to the conveyance and expressly made a part of it (Rec., p. 12).

(3) By a nuncupative will executed on February 7, 1889, Don Pedro Carillo made his wife, Dona Edilverta Juarez, his "fiduciary heir" of the property in question. It nowhere appears, however, when the testator died; except that he may be supposed to have died before February 5, 1892, when the document mentioned next hereafter was executed (Rec., pp. 12–14).

(4) Dona Edilverta Juarez herself made a will of this property in favor of her two nieces, Maria Paz Juarez and Rosa Juarez, on February 5, 1892 (Rec., pp. 14–18).

(5) Rosa Juarez alone, and without any concurrence of Maria Paz Juarez, made an act of transfer of the property to appellant on November 7, 1898; but this act of transfer was done before "the provisional representative of the public faith" of the town of Mabalacat, "by virtue of a decree of the revolutionary government dated September twenty-fourth of the present year, published on October the

second last in 'El Heraldo de la Revolucion'" (Rec., p. 19).

The bearings of these several title facts will be developed in their proper connection in the argument.

As to the existence, character, and duration of any possession of the lands in controversy by appellant or any of his predecessors in the chain of title, the Court of Land Registration expressly found:

> We find, therefore, that portions of the land were cultivated by Rafael Lacson between 1873 and 1881; that Carrillo cultivated certain parts until 1885; and that subsequent to that date the land was practically abandoned, there being no further cultivation and the public generally pasturing cattle thereon without interference. (Rec., p. 8.)

The Supreme Court of the Philippine Islands also found as follows:

> The evidence in the case, however, shows that neither the petitioner nor his grantors were in the open, continuous, exclusive, and notorious possession and occupation of the land in question during the ten years immediately preceding the taking effect of act No. 926. The evidence is practically conclusive that there was no cultivation or occupation of the land by anyone after 1885. (Rec., p. 36.)

If, in spite of these concurrent conclusions of the trial court and the Supreme Court concerning the possession, it could be appropriate for this court to reexamine the evidence, it would be found not only that there is evidence to sustain the conclusions of

fact by the courts below, but also that the evidence admits no different conclusion.

Appellant does not allege in his petition that he was in possession at the time of filing it, February 5, 1904, or that he had ever before been in possession (Rec., pp. 1, 2); and, on the contrary, he avers that "said property is occupied in part by a military post called 'Stotsenberg,' under the command of Colonel Hatfield, whose first name is unknown to me, and another part by tracks and a station belonging to the Manila to Dagupan Railroad, owned by a company which at the present time is managed and directed by Mr. Horace L. Higgins." (Rec., p. 2.) The military post was established upon the land under a reservation by the President pursuant to section 12 of the act of Congress approved July 1, 1902 (32 Stat., 691, 695), and entitled "An act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands, and for other purposes;" such military reservation being made by order dated September 1, 1903, and published as General Order No. 34 of the War Department, 1903. A copy of this order was annexed as an exhibit to one of the answers to appellant's petition (Rec., p. 4).

With a view to the defense based upon the royal decree of June 25, 1880, and the royal decree of February 13, 1894, and discussed in point XI of the argument, it should be noted that the lands in question were of an agricultural character. (Rec. pp. 11, 12, 19; and testimony in Rec. 21–34.)

The Spanish original of the alleged grant of July 13, 1873, to Rafael Lacson has not been transmitted with the record; and only an English copy is at hand.

The case has been brought here by both appeal and writ of error. (Rec., pp. 44, 45, 49.)

ARGUMENT.

I.

This court has no jurisdiction of the appeal and it must be dismissed; with the result that, the case being here solely upon writ of error, the facts must be accepted as found below.

Writ of error is the proper method of bringing here a case instituted in the Court of Land Registration for registration of ownership.

In *Carino* v. *The Insular Government of the Philippine Islands* (212 U. S., 449, 456) this court said:

> The Government has spent some energy in maintaining that this case should have been brought up by appeal and not by writ of error. We are of opinion, however, that the mode adopted was right. The proceeding for registration is likened to bills in equity to quiet title, but it is different in principle. It is a proceeding *in rem* under a statute of the type of the Torrens Act, such as was discussed in *Tyler* v. *Court of Registration* (175 Massachusetts, 71). It is nearer to law than to equity, and is an assertion of legal title; but we think it unnecessary to put it into either pigeonhole. A writ of error is the general method of bringing cases to this court, an appeal the exception, confined to equity in the main. There is no reason for

not applying the general rule to this case (p. 456).

Writ of error being proper, appeal is improper. This case, like the *Carino* case, "is nearer to law than to equity, and is an assertion of legal title." The statement in the *Carino* case that it was "unnecessary to put it into either pigeon hole" of law or equity must have meant that even if such a proceeding be neither legal nor equitable in a strict view, but is rather *sui generis*, then a writ of error is the appropriate course, because "a writ of error is the general method of bringing cases to this court, an appeal the exception, confined to equity in the main."

The act of July 1, 1902 (32 Stat., 691, 695, ch. 1369, sec. 10), from which this court's jurisdiction is derived, states that the final judgments or decrees of the Supreme Court of the Philippine Islands "may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved, *in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the circuit courts of the United States.*" This shows that writ of error or appeal is appropriate according to the nature of the case, and that both are not available in any case. Nowhere in the system of federal appellate procedure are both writ of error and appeal allowed indiscriminately, and any such rule concerning review of judgments of the Supreme Court of the Philippines would be quite anomalous.

In *Behn* v. *Campbell* (200 U. S., 611) an appeal from the Supreme Court of the Philippine Islands in an action at law was dismissed for want of jurisdiction; and in the same case, coming up later upon writ of error, this court said (205 U. S., 403, 407):

> The defendant first appealed from the judgment of the Supreme Court of the Philippine Islands, which had been rendered against it, and the appeal was dismissed (200 U. S., 611). The reason, so plain that it seemed not to require statement, was that errors alleged to have been committed in an action at law can be reviewed here only by writ of error. This in the absence of modification by statute is the rule in respect to all courts whose records are brought here for review. (*Walker* v. *Dreville*, 12 Wall., 440; *United States* v. *Hailey*, 118 U. S., 233; *Deland* v. *Platte County*, 155 U. S., 221; *Comstock* v. *Eagleton*, 196 U. S., 99.)

If, then, the case at bar is present only upon the writ of error, the facts must be accepted as found below. In *Behn* v. *Campbell* (205 U. S., 403), the court further said:

> The defendant, having failed in its appeal, has now brought a writ of error and asks this court to review the facts to the same extent that they would be reviewed on appeal. But this overlooks the vital distinction between appeals and writs of error which has always been observed by this court, and recognized in legislation. An appeal brings up questions of fact as well as of law, but upon a writ of error only questions of law apparent on the record

> can be considered, and there can be no inquiry whether there was error in dealing with questions of fact. (*Wiscart* v. *D'Auchy*, 3 Dall., 321; *Generes* v. *Campbell*, 11 Wall., 193; *United States* v. *Dawson*, 101 U. S., 569; *England* v. *Gebhard*, 112 U. S., 502; *Martinton* v. *Fairbanks*, 112 U. S., 670; *Dower* v. *Richards*, 151 U. S., 658 (where the cases are reviewed by Mr. Justice Gray); *Elliott* v. *Toeppner*, 187 U. S., 327; sec. 1011, Rev. Stat.) (p. 407.)

It was even held in the case last cited (205 U. S., 403) that this court could not consider whether the Supreme Court of the Philippines committed an error "in setting aside the conclusions of the lower court as plainly and manifestly against the weight of evidence;" because it is a question of fact, not of law, whether a conclusion of fact is "plainly and manifestly against the weight of evidence" (p. 408 of the opinion).

It is therefore true that the findings of fact in this case by the Court of Land Registration and by the Supreme Court of the Philippine Islands can not now be disregarded if there is *any* evidence tending to support them.

II.

Even if the appeal is not dismissed, still the facts will now be accepted as found below, because both the Court of Land Registration and the Supreme Court of the Philippine Islands found the facts alike; holding them to show no cultivation or occupation of the land after 1885 by the appellant's predecessors in the chain of title.

Further, as the statute stood when the present case was decided (December 21, 1906), the Supreme Court of the Philippine Islands

could not retry questions of fact even upon appeal unless the findings by the trial court were "plainly and manifestly against the weight of evidence," and therefore this court now can not inquire into the facts even upon appeal further than to see whether the findings of the trial court were "plainly and manifestly against the weight of evidence."

1. In references to cases coming from the Supreme Court of the Philippine Islands, this court has said:

> These are reviewable on appeal or writ of error by the party aggrieved, in the same manner as the final judgments and decrees of the Circuit Courts of the United States. There is no requirement that the facts shall be found. Appeals from the final decrees in these (Circuit) courts extend to an examination of the facts as well as the law. While upon such review this court will generally accept the concurrent conclusions of the trial and appellate courts, yet, as was said by Mr. Justice Brewer in *Beyer* v. *Le Fevre* (186 U. S., 114, 119): "There has always been recognized the right and duty of this court to examine the record, and if it finds that the conclusions are wholly unwarranted by the testimony it will set the verdict or report aside and direct a reexamination."
>
> *De La Rama* v. *De La Rama*, 201 U. S., 303, 309.

And again:

> Although there is no technical finding of facts by the Court of First Instance, yet in its opinion that court does state facts upon which it bases its judgment, and which may be referred to for the purpose of determining what the facts are. On appeal or writ of error from the judgment of the Supreme Court of the Philippine Islands the facts (when the courts

> below differ) will be reviewed by this court under the tenth section of the act of July 1, 1902, c. 1369, 32 Stat., 691. (*De La Rama* v. *De La Rama*, 201 U. S., 303, 309.)
>
> *Strong* v. *Repide*, 213 U. S., 419, 429.

It thus appears that, when the trial court and the Supreme Court of the Philippine Islands have not differed, but concur as to the facts, their conclusions will be accepted.

2. Section 4 of act 1108 of the Philippine Commission (enacted April 5, 1904) regulates review of decisions of the Court of Land Registration by the Supreme Court of the Philippine Islands, and makes applicable to such appellate proceedings section 497 of act 190 of the Philippine Commission concerning review of questions of fact by such Supreme Court. As said section 497 of act 190 stood when this case was decided by the Supreme Court of the Philippine Islands, its language now pertinent was:

> In hearings upon bills of exceptions, in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below, and affirm, reverse, or modify the judgment there rendered, as justice may require, in the following cases:
>
> * * * (3) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the findings of fact

> were plainly and manifestly against the weight of evidence, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the facts, and render such final judgment, as justice and equity may require. (1 Public Laws, Philippine Commission, p. 463.)

Act No. 1596 of the Philippine Commission (enacted February 25, 1907) amended the language just quoted, so as to read as follows:

> In hearings upon bills of exception in civil actions and special proceedings, the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section hereinafter provided; but shall determine only questions of law raised by the bill of exceptions. But the Supreme Court may review the evidence taken in the court below, and after giving due weight to the fact that the judge who tried the case saw the witnesses when they testified, affirm or reverse by a preponderance of the evidence, or modify by such preponderance, the judgment there rendered, as justice may require, in the following cases:
>
> * * * (2) If the excepting party filed a motion in the Court of First Instance for a new trial, upon the ground that the evidence was insufficient to justify the decision, and the judge overruled said motion, and due exception was taken to his overruling the same, the Supreme Court may review the evidence and make such findings upon the

> facts by a preponderance of the evidence, and render such final judgment, as justice and equity may require (6 Public Laws, Philippine Commission, p. 87).

It thus appears that, in the case of review of a decision of the Court of Land Registration by the Supreme Court of the Philippine Islands, consideration of the preponderance of the evidence was first permitted by the amendment of February 25, 1907, this case having been decided December 21, 1906 (Rec., p. 39). It can not be said that the quoted provisions of section 497 of act 190 and act No. 1596 do not apply to a proceeding for review of a decision of the Court of Land Registration, because these provisions relate to "hearings upon bills of exception in civil actions and special proceedings," for, as we have seen, act No. 1108 expressly makes section 497 applicable to a review of decisions of the Court of Land Registration. The result, therefore, is that, though under the amendment of February 25, 1907, the Supreme Court of the Philippine Islands now can consider the preponderance of evidence and reverse the Court of Land Registration upon such preponderance, in the present case that could not be done.

The Supreme Court of the Philippine Islands having had no power in the present case to set aside the findings of fact by the Court of Land Registration upon a new consideration of the preponderance of evidence, *a fortiori* this court can not reverse the Supreme Court of the Philippine Islands—even if the appeal is not

dismissed—upon the idea that the findings of fact by the trial court were against the preponderance of evidence. This court can not question the findings of fact by the trial court any more than the Supreme Court of the Philippine Islands could, unless they are "plainly and manifestly against the weight of evidence," and that means something very different from their being merely against the preponderance of evidence.

III.

This land was royal domain when the gobernadorcillo and principales of the pueblo of Mabalacat attempted to convey it to Lacson. The pueblo of Mabalacat is not shown to have had any title whatsoever to the land.

Further, even if it could be assumed that the pueblo had any partial interest in the land, the fee was in the King of Spain; and the pueblo could not alienate any part of the land without authorization or confirmation by the King.

1. The ownership of the land by the King is not questioned by the appellant. No claim that the town owned it is made in the brief of appellant. On the contrary, that brief expressly plants appellant's claim on statutes (Laws 1 and 8 of book 4, title 12, of the Laws of the Indies) relating to disposition of royal lands, and on prescription against the King.

2. Also, there is no evidence whatever of possession of any part of the land by the pueblo of Mabalacat when its gobernadorcillo and principales attempted to grant the land. The evidence instead is uncontradicted that the land was unoccupied in 1873, and was used as a refuge by brigands, savage negritos, and cattle thieves. It is so stated in the grant of the gobernadorcillo and principales itself. (Rec., p. 11.)

This court has said:

> As the right which the city asserts is devoid of every element of proof tending to show a possession coupled with claim of title, but rests upon the mere assumption of a right asserted to have arisen by operation of law hundreds of years ago, of course there is no room for the application of a presumption of an actual grant, within the doctrine declared in *United States* v. *Chaves* (159 U. S., 452). *United States* v. *Santa Fe* (165 U. S., 675, on p. 691).

3. Under Spanish law a pueblo did not become the owner of any part of the royal domain unless special grant was made to the pueblo and the extent and boundaries of the grant were specially designated by the proper granting authority. (*United States* v. *Santa Fe, supra.*)

It was there said, concerning the "Recopilacion de las Indias:"

> It may well also be implied from the provisions in the Recopilacion that the right of a town to hold land for public purposes was required to be evidenced by a grant from the viceroy or governor, and that such grant when made required confirmation by the Crown (p. 688).

To the same effect, *United States* v. *Sandoval* (167 U. S., 278).

There is nothing to suggest a different rule in the Philippines. (*City of Manila* v. *Insular Government*, 10 Philippine, 327.)

Further, if the pueblo of Mabalacat could be supposed to have owned any land, why this particular tract, and all of it? There is nothing in the record as to the situation of this tract, its shape, or its direction or distance from the center of the town.

4. Under Spanish law, even when lands were specially set apart for a pueblo, the fee remained in the King. (*United States* v. *Santa Fe*, 165 U. S., 675; *United States* v. *Sandoval*, 167 U. S., 278.)

In the latter case the Chief Justice said:

> The general subject was much considered in *United States* v. *Santa Fe, supra*, and it was said: "It can not be doubted that under the law of Spain it was necessary that the proper authorities should particularly designate the land to be acquired by towns or pueblos before a vested right or title to the use thereof could arise." Various extracts were made from the laws of the Indies, and the following passages from Elizondo's Practica Universal Forense were quoted:
>
> "The Kings, the fountains of jurisdictions, are the owners of all the *terminos* situated in their kingdoms, and as such can donate them, divide or restrict them, or give any new form to the enjoyment thereof, and hence it is that the pueblos can not alienate their *terminos* and *pastos* without precedent royal license and authority." (Vol. 3, p. 109.) "There is nothing whatever designated by law as belonging to towns, other than that which by royal privilege, custom, or contract between man and man, is granted to them, so that al-

though there be assigned to the towns at the time of their constitution a *territorio* and *pertinencias*, which may be common to all the residents without each one having the right to use them separately, it is a prerogative reserved to the princes to divide the *terminos* of the provinces and towns, assigning to these the use and enjoyment, but the domain remaining in the sovereigns themselves." (Vol. 5, p. 226.)

And it was then observed: "Moreover, the general theory of the Spanish law on the subject indicates that, even after a formal designation, the control of the outlying lands, to which a town might have been considered entitled, was in the King, as the source and fountain of title, and could be disposed of at will by him or by his duly authorized representative, as long as such lands were not affected by individual and private rights. This is shown by the quotation from Elizondo, already made. The provisions of law 14, title 12, book 4 of the Recopilacion (2 White New Recop., p. 52) * * * illustrate the absolute control thus exercised by the King of Spain over the subject" (pp. 295 and 296).

And even when special grant of some right in land had been made to a pueblo, it could not alienate the land without royal authorization or confirmation. This is shown by the quotation which this court made, as above given, from Elizondo's work.

IV.

Appellant's claim that law 1 of book 4, title 12, of the laws of the Indies authorized the grant of 1873 to Laeson by the gobernadorcillo and principales of the pueblo of Mabalacat is unfounded.

Such law reads:

> In order to promote the zeal of our subjects in the discovery and settlement of the Indies, and that they may live in that ease and comfort which we desire them to enjoy, it is our will that there be distributed among them houses, lots, lands, *caballerías* and *peonías*, to all those who shall repair to settle on new lands in the villages and places which shall be designated to them by the governor of the new settlement, making a distinction between the gentlemen or esquires (escuderos) and labourers (peones) and those of inferior grade and merit, and graduating such grants according to their qualifications and services, in order that they may attend to working the said land and to the breeding of stock; and when said settlers shall have lived and laboured in said settlements during the space of four years, they are hereby empowered, from the expiration of said term, to sell the same, and freely to dispose of them at their will as their own property; and the governor, or whoever shall be thereto authorized by ourselves, shall, in the distribution which he shall make of the Indians, and according to the merits and rank of said settlers, grant them said Indians, so that they may enjoy the profits arising from their possessions, according to the established rates and the enactments in that behalf.

> And whereas it may happen that in the distribution of lands doubts may arise respecting the measurement thereof, we delcare that a *peonia* is a lot of fifty feet front and one hundred feet deep, one hundred *fanegas* of arable land fit for the cultivation of wheat or barley, ten for corn, two *huebras* (a measure equal to as much land as a yoke of oxen can plough in one day) of land for garden, and eight for planting other trees which grow in dry land, with pasture sufficient for ten breeding sows, twenty cows, five breeding mares, one hundred ewes, and twenty goats. A *caballeria* is a lot of one hundred feet front and two hundred feet deep, and equal in all other respects to five *peonias* that is, five hundred *fanegas* of arable land fit for the raising of wheat or barley, fifty for corn, ten *huebras* of land for gardens, forty for other trees growing in dry soils, pastures for fifty breeding sows, one hundred cows, twenty mares, five hundred ewes, and one hundred goats. And we command that a distribution may be made in such a form that all shall participate in the good as well as in the middling, or all other qualities of land in the tract which shall be allotted to them. (2 White's New Recopilacion, p. 48.)

The following reasons show either a total inapplicability of the quoted law to the present case or its insufficiency to warrant a grant by the gobernadorcillo and principales.

1. The law relates only to grants in new settlements and to new settlers; not to a grant attempted, as in

this case, two hundred or more years after the island of Luzon was made a Spanish colony and an indefinite time after the town of Mabalacat arose.

The language of the law makes this clear. Its purpose is "to promote the zeal of our subjects in the discovery and settlement of the Indies." It contemplates a distribution of the town lands "to all those who shall repair to settle" in the new settlement. It provides for grants of the Indians, as well as lands, to the settlers; and such a feature is pertinent only to new settlements in the early times.

This law was part of a system for the foundation of new settlements; and the system will be found also in book 4, title 5, laws 6 to 10, inclusive (2 White's New Recopilacion, 44, 45), and in book 4, title 5, law 9, and book 4, title 7, laws 20 and 21, of the laws of the Indies. The last two laws are quoted on pages 686 and 687 in *United States* v. *Santa Fe* (165 U. S., 675), but are not found in White's New Recopilacion. Still other laws form part of the general plan of settlement, and I have referred only to some of the most important.

In general, the system included a contract by the representative of the King with the person proposing to found a settlement or with the group of intending founders whereby lands were set apart for the new settlement. (Book 4, title 5, laws 6 to 10; *United States* v. *Santa Fe*, 165 U. S., 675, 683–688.) Contracts were also made with "each individual who may enlist to join the settlement;" but whether these distributive contracts were to be made by the gov-

ernor of the colony or by the founder or founders of the particular settlement to which lands had been assigned by the governor of the colony seems uncertain. (Book 4, title 5, law 9.) Beside the allotment to individual settlers, sufficient portions of the lands granted to the new settlement by the viceroy or governor of the colony, or other authorized representative of the King, were set apart for town purposes—"liberties," commons, general pasturage, and public sites. (Book 4, title 7, laws, pp. 7, 13, 14.)

Law 1 of book 4, title 12, under which appellant claims, was part of this general plan, and can not authorize a grant attempted long after a town had come into existence, and without any connection with its foundation or early settlement.

2. This law 1 of title 12 relates only to grants to individual settlers from such land as has been assigned for the new settlement as a whole by the viceroy, governor of the colony, or other representative of the King. Law 9 of book 4, title 5, of the laws of the Indies should now be quoted:

> In contracts for new settlements made by the government, or whoever shall be thereto authorized in the Indies with cities, *adelantado*, superior *alcalde* or *corregidor*, the person entering into the agreement shall do so likewise with each individual who may enlist to join the settlement; and he will bind himself to grant building lots in the new settlement, together with pastures and lands for cultivation, in a number of *peonias* and *caballerias* proportionate to the quantity of land which each set-

> tler shall obligate himself to improve; provided it shall not exceed, nor shall he grant more to each than, five *peonias* or three *caballerias*, according to the express distinction, difference, and measurement prescribed in the laws of the title concerning the distribution of lands, lots, and waters. (2 White's New Recopilacion, 45.)

It is obvious that the lands allotted to any individual settler under this law were to come out of the lands assigned to the settlement as a whole by the Government. This law, too, connects itself expressly with the laws of title 12 of the same book, concerning "the distribution of lands, lots, and waters" in the new settlement, saying that the grant shall not be "more to each than 5 peonías or 3 caballerías, according to the express distinction, difference, and measurement prescribed in the laws of the title concerning the distribution of lands, lots, and waters."

Law 1 of book 4, title 12, states "the express distinction, difference, and measurement" so referred to, in that said law 1 of title 12 requires that the distribution to individual settlers be based upon "a distinction between the gentlemen or esquires and labourers and those of inferior grade and merit, and graduating such grants according to their qualifications and services, in order that they may attend to working the said land and to the breeding of stock," and, further, in that it is this law 1 of title 12 which expressly defines and measures peonias and caballerias.

The connection of law 1 of title 12 with the scheme of distribution of the lands assigned to the new settlement by the viceroy or governor of the colony is apparent. This law may well relate solely to allotments in performance of the contracts with individual settlers made pursuant to law 9, book 4, title 5; but whether so or not, law 1 of title 12 certainly contemplates only allotments or grants to the settlers from the body of land assigned to the settlement by the viceroy or governor of the colony. It says in terms that "there be *distributed*" houses, lots, lands, caballerías, and peonías, to the settlers "on new lands in the villages and places which shall be designated to them by the governor of the new settlement." This means that the distribution be of the lands "designated" to the villages and places constituting the new settlement. It does not mean that lands shall be distributed to the individual settlers which have not been assigned to the new town. The connection or at least the analogy of this law 1 of title 12 with law 9 of title 5, beside the language of law 1, shows this; both laws relating to the allotment of the community lands.

If there could be any doubt, it is dispelled by the last sentence of law 1, title 12, which reads:

> And we command that a distribution may be made in such a form that *all shall participate* in the good as well as in the middling, or all other qualities of land *in the tract which shall be allotted to them.*

This "tract which shall be allotted to them" is unmistakably the community land; for that is the only tract requiring a distribution or concerning which it could be provided that "all shall participate," with fair consideration also of the quality of the land in the distribution.

Attention should be given also to law 10, book 4, title 5, which reads:

> Whenever particular individuals shall unite for the purpose of forming new settlements, and among them there shall be a sufficient number of married men for that purpose, license may be granted to them, provided there be not less than ten married men, together with an extent of territory proportioned to what is stipulated; and we empower them to elect, annually, from among themselves, ordinary *alcaldes* and officers of the council. (2 White's New Recopilacion, 45.)

And to law 5, book 4, title 12, which reads:

> In distributing the lands, waters, watering places, and pastures, among the settlers the viceroys or governors thereto authorized by ourselves shall make such distribution by the advice of the *cabildo* (council) of the cities or villages, taking care that a preference be given to the *regidores*, if they do not possess an equivalent quantity of lands and lots. The Indians shall be left in possession of their lands, hereditaments, and pastures in such a manner that they shall not stand in need of the necessaries of life, and shall be allowed all the

> aid and facilities, for the sustenance of their household and familles. (2 White's New Recopilacion, 50.)

All these laws manifest and relate to a plan for distribution among individual settlers of such land as has been granted to the new settlement. There is no proof in this case that any land was ever granted to the pueblo of Mabalacat. Indeed, there is no proof that Mabalacat is a town of Spanish foundation rather than a native Filipino community. There is no proof, therefore, that Mabalacat ever had any grant of land from which a distribution could be made to individual settlers under law 1 of title 12 or any other of the cited laws.

3. Every person seeking an allotment under law 1, title 12, had to give a written obligation, with sureties, under law 3 of the same title 12 of book 4 of the laws of the Indies, which reads:

> The persons who shall accept grants of *caballerias* or *peonias* shall enter into an obligation to build upon the lots and to occupy the houses, to divide and clear the arable lands, and to work and plant them, and to stock with cattle those which are destined for pasture, within a limited time, divided into terms, and declaring what is to be done in each, under the penalty of forfeiting their grants of lots and lands, and besides a certain number of maravedis for the republic; which obligation shall be in due form, with good and sufficient sureties. (2 White's New Recopilacion, 50.)

No such obligation was exacted from or given by Lacson.

The applicability of law 3, title 12, to grants under law 1 of title 12 appears through its mention of the "persons who shall accept grants of caballerías or peonías," and also in detail through its provisions that the obligation shall be "to build upon the lots and to occupy the houses, to divide and clear the arable lands, and to work and plant them, and to stock with cattle those which are destined for pasture." All these things are the subject of law 1. Also, law 3 of title 12 was promulgated or at least reenacted by King Philip II, as Ordenanza 107, and Law 1 was likewise reenacted by that King, with changes and additions introduced from his Ordenanzas 104, 105 and 106. (See Spanish Edition of Recopilacion, Madrid, 1841; Libro IV, Titulo XII.)

4. Law 1 of title 12 does not contemplate or authorize a grant of 1,200 hectares (some 3,000 acres), such as was made to Lacson.

The area of the grant under law 1 is required to correspond with the rank of the grantee and to be graduated according to his qualifications and services; and the law contemplates fair apportionment on these principles among all settlers in the town. The attempted grant to Lacson is plainly of a different character.

Further, the attempted grant to Lacson was of an area far in excess of the limit fixed for grants to settlers in towns by law 9 of book 4, title 5, already

quoted. That limit is five peonías or three caballerías, as defined in law 1, title 12.

5. If, as already contended, law 1 of title 12 relates only to the distribution of land granted to the new settlement as a community by the viceroy or governor of the colony, it may be uncertain whether the allowance of a distributive share to the individual settler must be by the viceroy or governor, or may be by the founder or group of founders of the new settlement. There is some obscurity in the language of law 9 of book 4, title 5, on that point, and it is repeated here:

> In contracts for new settlements made by the government, or whoever shall be thereto authorized in the Indies with cities, adelantado, superior alcalde or corregidor, the person entering into the agreement shall do so likewise with each individual who may enlist to join the settlement.

Does "the person entering into the agreement" mean the viceroy, the governor, or other authorized representative of the King, or does it mean the other party to the contract for the new settlement? That obscurity, however, seems to be removed by law 5, book 4, title 12, which reads:

> In distributing the lands, waters, watering places, and pastures among the settlers, the viceroys or governors thereto authorized by ourselves shall make such distribution by the advice of the cabildo (council) of the cities or villages, taking care that a preference be given

> to the regidores, if they do not possess an equivalent quantity of lands and lots. The Indians shall be left in possession of their lands, hereditaments, and pastures, in such a manner that they shall not stand in need of the necessaries of life, and shall be allowed all the aid and facilities, for the sustenance of their household and families.

This law indicates that even the allotments to individual settlers out of the town or village land must be made by the "viceroy or governor thereto authorized by ourselves," the King; but *if law 1 of title 12 allows any grant of other land than has been previously assigned to the town or village by the viceroy or governor authorized by the King, it is then unmistakable that the quoted law 5 of title 12 requires that grant to be made by the viceroy or governor authorized by the King, with the advice of the council (cabildo) of the community.* If, then, law 1 of title 12 can apply at all to this case, it was necessary that the grant to Lacson should be made by the "viceroy or governor thereto authorized by" the King. A grant merely by the *gobernadorcillo and principales* was not authorized.

It will be noticed that if the designation of lands by the governor, mentioned in law 1, title 12, refers to the grant of community land rather than the distribution of that land to individual settlers, then said law 1 does not itself say who shall make the distributive grants to particular settlers; and if law 1 applies to a grant of other lands than a part of the community lands, then such grants certainly can not be by the founder or founders of the new settlement, because

they have no interest in or control over the land to be granted. Hence, on the stated hypothesis that law 1 of title 12 applies to a grant of any other than community land, it is patent that the grant must be by the viceroy or governor of the colony acting as the authorized representative of the King in that respect.

Further, the translation of this law 1 found in *Valenton* v. *Murciano* (3 Philippine, 537), on page 540, is more explicit than the translation in White's New Recopilacion, in showing that even if the distribution is made from the land assigned to the town by the governor of the colony it is he, such governor, who is to make the distribution. That translation reads:

> In order that our subjects may be encouraged to undertake the discovery and settlement of the Indies, and that they may live with the comfort and convenience which we desire, it is our will that there shall be distributed to all those who shall go out to people the new territories, houses, lots, lands, *peonias*, and *caballerias* in the towns and places which may be assigned to them by the governor of the new settlement, who, in apportioning the lands, will distinguish between gentlemen and peasants, and those of lower degree and merit, etc.

The attempted grant to Lacson was not so made.

6. In any view of law 1 of title 12 the gobernadorcillo and principales had no authority to make a grant of land. On the contrary, a gobernadorcillo is a sort of successor to the native chiefs in native towns, exercising under Spanish law little more authority than a justice of the peace or similar inferior magistrate;

and principales are nothing more than leading men, given somewhat higher than ordinary rank and dignity in the community for one or another reason. Illustrations of these facts are at hand.

In his history of the Philippines, T. H. Pardo, a member of the Philippine Commission, says, concerning the office and duties of gobernadorcillo:

> Each town had an additional chief called a gobernadorcillo (petty governor), which title was given at the time of the Spanish occupation, and was continued in use until the end of the Spanish sovereignty. The gobernadorcillo was elected by the cabezas de barangay in each municipality. The names of three candidates were sent at the beginning of each year to the governor-general, or in certain distant provinces to the local representative of the central government, and one of the three candidates was selected and appointed by the governor as gobernadorcillo. *In the year 1782 the governor changed the name of gobernadorcillo to alcalde, which was the official title given to these officers in the law;* but the King in a royal cédula of July 18, 1784, directed that the title of gobernadorcillo should be respected, *stating, however, that it was a diminutive form of title* not suited to describe an official charged with the administration of law. (1 Census of the Philippine Islands, 365, 366.)

It is further said concerning a gobernadorcillo in the same work:

> As has been stated already, the pueblos or municipalities were under *petty governors, who were local judges or justices of the peace* in

their respective municipalities. Their powers and duties were defined in the auto acordado of the audiencia of Manila of August 31, 1860, approved by the royal decree of January 18, 1865. *In civil suits their jurisdiction was limited to cases where the property or interests involved did not exceed forty-four pesos, and to minor offenses the penalty for which did not exceed ten days' confinement, or a fine of five pesos.* (1 Census of the Philippine Islands, 402.)

In Blair and Robertson's work this is said:

> The subdivision of the provinces was into *pueblos* each under its petty governor or *gobernadorcillo*. The *gobernadorcillo* was an Indian and was elected annually. In Morga's time the right of suffrage seems to have been enjoyed by all married Indians, but in the last century it was restricted to thirteen electors. The *gobernadorcillo* was commonly called the "captain." Within the pueblos the people formed little groups of from forty to fifty tributes called *barangays*, under the supervision of *cabezas de barangay*. These heads of *barangay* represent the survival of the earlier clan organization and were held responsible for the tributes of their groups. Originally the office of *cabeza de barangay* was no doubt hereditary, but it became generally elective. The electors of the *gobernadorcillo* were made up of those who were or had been *cabezas de barangay* and they after three years of service became eligible to the office of petty governor. (1 Blair and Robertson's "Philippine Islands," pp. 55–56.)

From the nature of his duties as given in the auto acordado of August 31, 1860, approved by royal decree of January 18, 1865 (12 San Pedro, 150; 1 Philippine Islands Census, 402), the gobernadorcillo may fittingly be described as a police magistrate and justice of the peace.

As to principales, we find the following:

> During the first days of the colony the Indians were governed under a system very similar to that which they had before the arrival of the Spaniards. The chiefs of the various tribal groups were continued under the title of cabeza de barangay, and they were confirmed in authority in the name of the King of Spain. This native title was hereditary, and when there were no male descendants to represent any particular cabeza the succession was filled by appointment made by the Spanish Government. Although the orders of the King strictly prohibited the Spanish colonists from obliging the chiefs of the tribes to collect the tribute from the natives, the custom nevertheless obtained, and many cabezas de barangay were arrested and punished by fines and otherwise for failing to properly collect and account for the tribute from the members of their tribes. These chiefs paid no tribute on their own account, and at the end of three years' satisfactory service they were allowed to resign as cabezas, and were thereafter also exempted from the payment of the tribute. *The retired chiefs thereupon became members of a local municipal body, called la principalia, the other members of the body*

> *consisting of the privileged classes in the town.* (1 Census of the Philippine Islands, 365; 1 Blair & Robertson's History of the Philippine Islands, 56; 46 id., 83.)

A note by the director of the Philippine census, found on the same page, 365, says:

> Under the Spaniards, the principalia (principal persons) were understood to be *the aggregate in each pueblo of all those individuals who had held office, or were holding office, or who paid a land tax of fifty dollars. The principalia constituted the voting class—no one could vote who was not a member of the principalia.*—Director.

The principalia, therefore, seem to have constituted rather a class than an organized body; and this view is corroborated by the fact that after a certain number of years of service teachers and their assistants became entitled to be called principales. (46 Blair & Robertson's History of the Philippine Islands, 83.)

Obviously, such persons as a gobernadorcillo and principales were never authorized by the Spanish law to grant public lands; and yet in this case some 3,000 acres, over 5 square miles, are claimed through such a grant.

Numerous decisions of this court show the utter insufficiency of the grant under consideration.

(1) It is held that an alcalde had no power under Spanish law to grant public land, the court saying:

> That a justice of the peace, or an alcalde, had no power to make a grant of public lands

> is evident from the character of his office, which appears to have been analogous to that of an ordinary justice of the peace (decree of July 22, 1833, Reynolds, 170, 176), and from the failure to find any evidence in the laws of Spain or Mexico that such power existed. Indeed, such want of power is admitted by the petitioner. See *Reynolds* v. *West*, 1 California, 322; *Crespin* v. *United States*, 168 U. S., 208, 213.
>
> *Hays* v. *United States*, 175 U. S., 248, 258.

As a gobernadorcillo is like an alcalde, and indeed at times has been officially designated as an alcalde, this case is quite in point.

Similarly, the prefect of a district and the justice of the peace could not grant. (*Crespin* v. *United States*, 168 U. S., 208; *United States* v. *Elder*, 177 U. S., 104, 121.)

This court said in the Elder case:

> Now, it is undoubted that the documents executed by the prefect and the justice of the peace fairly import that those officials assumed authority to grant something as respected the land in question, either title or a right of possession for purposes of cultivation, but it is beyond controversy that the officials referred to did not, in 1845, possess power to grant the title to public lands. *Hays* v. *United States*, 175 U. S., 248; *Crespin* v. *United States*, 168 U. S., 208; *United States* v. *Bergere*, 168 U. S., 66. If, however, the subordinate officials referred to presumed to act on behalf of the governor in making a grant of

> title, the failure of the latter to subsequently ratify their action rendered their acts nugatory (p. 121).

And even a territorial deputation of a Mexican province or territory had no authority to grant. (*Hayes* v. *United States*, 170 U. S., 637; *Chavez* v. *United States*, 175 U. S., 552.)

(2) A long line of cases shows that the viceroy or governor of the colony was the proper granting authority, under Spanish law.

United States v. *Arredondo* (6 Pet., 691).
United States v. *Percheman* (7 Pet., 50).
United States v. *Clarke* (8 Pet., 436).
United States v. *Segui* (10 Pet., 306).
United States v. *Chaires* (10 Pet., 308).
United States v. *Seton* (10 Pet., 309).
United States v. *Sibbald* (10 Pet., 313).
United States v. *Rodman* (15 Pet., 130).
United States v. *Acosta* (1 How., 24).
United States v. *Peralta* (19 How., 343).
United States v. *Workman* (1 Wall., 745).
Serrano v. *United States* (5 Wall., 451).

Mr. Justice Davis said in *Serrano* v. *United States* (5 Wall., 451):

> Under the Government of Spain, in California, the commandante or priest had no authority to grant lands, or to make contracts that could bind the Spanish Government to grant them. The governors of the country only had this power (pp. 460–461).

And even the governor could not delegate his authority without express warrant of law. (*Florida* v. *Furman*, 180 U. S., 402, 432.)

(3) This court said in *Whitney* v. *United States* (181 U. S., 104):

> We are not satisfied that there was a general power on the part of the governor of a territory at any time to make a valid grant of lands in all cases and simply as the agent of the supreme executive, such as is contended for by counsel for the appellants. No evidence that the governors legally had that power has been given other than the fact that they sometimes exercised it. *It appears, however, that for some years prior to 1845 grants of land were made not only by governors, but even by alcaldes, prefects, justices of the peace, and by judges of first instance, so that, in the language of one of the judges of the court below, "It was a poor officer, indeed, who did not assume to be able to dispose of the public domain belonging to the nation."* Hence the reluctance to presume the validity of a power because of its exercise (pp. 114–115).

7. This court has held also as to a grant under law 1, book 4, title 12, of the laws of the Indies that "*confirmation* by the audiencia, or the governor, if recourse to the audiencia was impracticable, after the four years had elapsed, was required in completion of the legal title." (*Chavez* v. *United States*, 168 U. S., 177, 188; *United States* v. *Elder*, 177 U. S., 104, 118.)

In the Elder case it was said:

> It certainly can not be questioned that, under Spanish dominion, the public lands were not granted in the first instance, in fee, to

> settlers or colonists, freed from conditions (p. 118).

And then in the Elder case the court repeated the above quotation from the Chavez case. The reference given in support of such quotation to "Laws Indies, Lib. IV, tit. 2, law 1" is a misprint for title 12, and the error originated in 2 White's New Recopilacion itself, on page 48; and the true reference, title 12, is shown by the further reference to page 48, where title 12, law 1, appears, and also by the description of the law in the opinion.

No confirmation of the grant to Lacson is shown; and the lack of it is fatal. Beside the necessity of confirmation through the direct operation of law 1, law 14 of book 4, title 12, and the royal regulation of October 15, 1754, also show a confirmation to have been requisite (2 White's New Recopilacion, 52 and 62–67).

8. Not only in this case, but also in *Evangelista* v. *Bascos* (5 Philippine, 255), the Supreme Court of the Philippines held a grant by *principales* void, saying:

> The evidence does not show that he has any documentary title to any of the land. He introduced in evidence a paper, executed by the *principales* of the town in 1860, which purported to give him and Leonardo Evangelista the ownership of a certain tract of land in said barrio for the purpose of cultivating the same. The title to this land could not have been granted by this instrument, because the persons executing it had no power to convey it (p. 256).

9. Finally. Mabalacat does not appear to have been a town of Spanish foundation; and if not, law 1 of book 4, title 12, does not apply to it at all.

Spaniards, of course, may have located themselves from time to time in Mabalacat, but, for all that appears, the town was a native Filipino settlement. The name of the town so indicates; and, as already shown, the presence of a gobernadorcillo confirms the indication.

V.

Law 8 of book 4, title 12, of the laws of the Indies gave no authority to the gobernadorcillo and principales of Mabalacat to make the grant to Lacson.

Law 8, in Spanish, reads as follows:

> Ordenamos que si se presentare peticion, pidiendo solares, ó tierras en ciudad, ó villa donde residiere audiencia neustra, se haga la presentacion en el cabildo, y habiendolo conferido, se nombren dos regidores diputados, que hagan saber al virey, ó presidente lo que al cabildo pareciere, y visto por el virey, ó presidente y diputados, se dé el despacho firmado de todos en presencia del escribano de cabildo para que lo asiente en el libro de cabildo; y si la peticion fuere sobre repartimiento de aguas y tierras para ingenios, se presente ante el virey, ò presidente, y él la remita al cabildo, que asìmismo habiéndolo conferido, envie á decir su parecer con un regidor, para que visto por el virey, ó presidente, provea lo que convenga. (Recopilacion de leyes de los reinos de las Indias; Tomo segundo; Quinta edicion; Madrid, 1841.)

This law is translated by Mr. M. A. Colton, instructor in Spanish and French in the United States Naval Academy, and formerly division superintendent of schools in the Philippine Islands, as follows:

> We order that if a petition is presented asking for lots or lands in a city (ciudad) or a town (villa) where our high court (audiencia nuestra) is established (sits), the petition shall be made to the council (cabildo), and after the matter has been considered by it, two councilmen (regidores) shall be appointed as deputies (diputados) to inform the viceroy or president (presidente) of the opinion of the council (cabildo) upon the matter, and after the grant has been examined and approved (visto) by the viceroy or president (presidente), and deputies (diputados), the grant shall be issued, signed (firmado) by all in the presence of the clerk of the council (cabildo), in order that it may be recorded in the book of the council (cabildo); and if the petition shall be about the disposition of waters and lands for sugar plantations, it shall be made to the viceroy or president (presidente), and he shall remit it to the council (cabildo), which, likewise having considered it, shall send word of their opinion through a councilman, in order that after it has been examined by the viceroy or president (presidente) he may decree what seems best.

The translation in *Valenton* v. *Murciano* (3 Philippine, 537), on page 542, was made by an unknown person—not by the court. The opinion itself, which quoted the law, was in Spanish, and was afterwards

translated, Spanish being at that time the language of the court. (Act 190, sec. 12; act 1123, sec. 1; and act 1427 of the Philippine Commission.) I am so advised also by Judge Willard, now United States District Judge in Minnesota, and then a justice of the Supreme Court of the Philippines.

The inapplicability of law 8 to the present case is shown by these points:

1. Law 8 relates only to grants of land in the city or villa where the royal audiencia sits. That was only Manila until February 26, 1886, when a second audiencia was established at Cebu.

The audiencia of Manila was created by royal decree of May 5, 1583. (1 Census of the Philippines, 391; Law 11 of Title 15, Recopilacion, published at Madrid in 1841.) It was abolished in 1589, but re-established in 1596, and has since existed. (1 Census of the Philippines, 396.) The foundation of the second audiencia of Cebu is stated in 1 Census of the Philippines, page 399. A useful general summary of the history and functions of the audiencia of Manila is given in the same work on pages 391–400; and a full translation of all important articles of the decree of 1583, creating the Manila audiencia, will be found on pages 274–318 of volume 5, and pages 1 to 44 of volume 6 of Blair and Robertson's "Philippine Islands."

As the foregoing references will amply demonstrate, the audiencia was the highest tribunal in the Philippine Islands, having mixed functions of executive, legislative, and judicial character. Its judicial function,

however, was most prominent, and as time went on some separation of the legislative and judicial functions of the audiencia was effected. Even to the establishment of American sovereignty, however, the audiencia continued to enjoy both legislative, executive, and judicial powers. The governor and captain-general of the Philippines was expressly made president of the audiencia by the original decree of 1583; there were associate judges, usually four in number; and there were a fiscal, a high constable, and chancellor. Rule 1 of the decree of 1583 fixed the seat of the audiencia at Manila, saying, that "in the said city of Manila there shall be a house of audiencia, where may sit and reside our said president and auditors, and where our royal seal and register may be kept." (5 Blair and Robertson's "Philippine Islands," 275.)

Such was the body to which law 8 of book 4, title 12, of the Laws of the Indies referred, when it spoke of a city or town "where our high court (audiencia) is established." No other court or public body of any sort is within the language or view of said law 8. This is clear of itself, but finds specific corroboration of the most definite kind in item 47 of the decree of 1583, establishing the audiencia, which reads as follows:

> 47. *Item.*—When any one shall petition for an assignment of any town lots or agricultural lands in the city or town where our audiencia shall reside, then after conference in the cabildo, notice of the judgment of the cabildo

> shall be given to our president, by means of two regidors deputed therefor. And when they have made their examination, that upon which the president together with the two deputies shall determine, shall be carried out, being attested by all in the presence of the clerk of the cabildo, that he may record it in the council book. Petitions for assignments of lands and waters for machinery shall be presented before the president, who shall transmit them to the said cabildo that they may confer thereon. They shall return them by a regidor, who shall report their conclusions, so that after examination the president may determine that which is fitting. (5 Blair and Robertson's "Philippine Islands," 290–291.)

In the language just quoted the decree of 1583 repeats in its essentials the law 8 which is under consideration.

2. Law 8 is also limited to grants of land in a ciudad (city), or a villa (a special class of local community between a ciudad and a pueblo). Mabalacat, as a mere pueblo, was neither ciudad nor villa. The designation and character of a ciudad or villa were accorded by royal cedula or order; and law 6 of book 4, title 8, of the Laws of the Indies, forbids assumption of such designation or character of ciudad or villa by any pueblo of either Spain or the Indies without royal allowance. This law is necessarily given in Spanish, as the exact words are fundamental.

> Que los vireyes, audiencias y gobernadores no den titulos de ciuadades ni villas.

> Ordenamos que por ninguna causa, ni razon los vireyes, audiencias, gobernadores, ni otros cualesquier ministros de las Indias, por superiores que sean, dén *títulos de ciudades, ni villas* à ningunos de los pueblos, ni lugares de españoles, ni indios, ni los eximan de la jurisdiccion de sus cabeceras principales: con apercibimiento, que se les hará cargo en sus residencias, porque esta merced y facultad se ha de pedir en nuestro consejo de Indias, y damos por nulos los títulos, que en contravencion á lo contenido en esta ley, se dieren á cualesquier pueblos y lugares; y en cuanto á las nuevas poblaciones y fundaciones, se guarde lo dispuesto. (1 Recopilacion, published at Madrid, 1841.)

The translation of this law, found in Reynold's "Spanish and Mexican Land Laws," on pages 46 and 47, fails utterly to show the true significance of the law because of the indiscriminate use of the word "town." The different legal character and status of a ciudad and villa and a pueblo in Spanish law are now apparent; and therefore the mention in law 8 of book 4, title 12, of a ciudad or a villa is exclusive of a pueblo. Law 8 has no application to a grant of land in a pueblo. This distinction, too, is a natural accompaniment of the restriction of the granting power under law 8 to the president of the audiencia, because the audiencia in the Philippines sat in a ciudad, and doubtless such audiencias as existed in other great colonies of Spain, like Mexico and Peru, sat in a town of sufficient dignity to be a ciudad or a villa.

Concrete examples of royal orders granting the title of ciudad or villa to towns will be found in the royal cedula of August 14, 1743, granting the title of villa to the town of Guanabacoa, in Cuba (Legis. Ultram., vol. 3, p. 158); the royal order of November 12, 1817, granting the title of ciudad to the villa of Santa Maria de Puerto Principe (id., vol. 3, p. 159); royal order granting the title of "Faithful City" to the villa of Santiago de Cuba (3 id., 160).

Law 8 accordingly could not authorize a grant of land in the pueblo of Mabalacat.

3. Under law 8 the grant is to be "examined and approved by the viceroy or the president (presidente), and deputies (diputados)." These deputies are councilmen (regidores) appointed by the council (cabildo) of the city (ciudad) or town (villa). In making the grant to Lacson no deputies of any kind were appointed by anybody or acted in any way. Passing that point, however, we come to the question, Who is a presidente within the meaning of law 8? Obviously the president of the royal audiencia. The translation of the grant to Lacson on page 11 of the record puts the word "president" in parentheses after "gobernadorcillo," but the gentleman is unidentified who made this interpretation. Law 8, when it says "presidente," means what it says; and if law 8 had meant "gobernadorcillo" it would have said "gobernadorcillo."

Law 11 of book 2, title 15, of the Laws of the Indies (1 Recopilacion, published at Madrid, 1841), will be found translated on page 552 in *Jover* v. *Insular*

Government (10 Philippine, 522). It relates to the reestablishment of the audiencia at Manila and says:

> In the city of Manila island of Luzon, capital of the Philippines, another *audiencia* and royal chancellery is established, with a president, who shall be the governor and captain-general.

This shows what "presidente" meant in reference to the audiencia and in the language of law 8. The coupling of president with the viceroy under the requirement of law 8 that the grant shall be examined and approved "by the viceroy or president" shows the same thing. In the Philippines there never was a viceroy, but in his place there was a governor and captain-general; and he was ex officio president of the audiencia. In connection with some separation of the legislative and judicial functions of the audiencia, the governor and captain-general ceased to be the president of the audiencia under royal decree of July 4, 1861, but remained head of the council of administration which took over such legislative functions as then were transferred from the audiencia. (1 Census of the Philippines, 398.) The president of the audiencia thereafter was the person who previously, under the royal cedula of January 30, 1855, had been the regent, "the real head of the audiencia" in the absence of the governor (ib.). This regent took the place of the "dean" of the tribunal, who formerly was "the presiding officer during the absence of the governor, and was given the title of captain-general." (Commissioner Pardo, in his arti-

cle on Government, 1 Census of the Philippine Islands, 363.)

The laws of the Indies frequently referred to the president of the audiencia, and the word "presidente" in those laws applies regularly to that high officer. (Law 9, title 1, book 2; law 36, title 2, book 5; law 14, title 12, book 4; law 64, title 3, book 4; see also Laws in White's New Recopilacion, vol. 2, pp. 30, 32; *Jover* v. *Insular Government*, 10 Philippine, 522, on pp. 544, 555.)

In the prefatory act of 1680, whereby the King made operative the "Recopilacion de leyes de los reinos de las Indias," the address is from the King "to our viceroys, presidents, auditors of our royal audiencias, governors, magistrates," and to the judges, treasury officials, and army and navy officers generally; and the presidents come even before governors and next after viceroys; and nowhere is a gobernadorcillo or petty governor mentioned. (Message from the President of the United States "transmitting information" in relation to the several acts providing for the "settlement and confirmation of private land claims in Florida," Doc. 121, 20th Cong., 2d sess.)

Beside the express repetition of law 8 in item 47 of the decree of 1583, establishing the Manila audiencia (to which reference has already been made), the whole decree will be found repeatedly to refer to the president of the audiencia as "president" or "our president" and to confer varied powers upon him.

4. Law 8 requires that grants under it be made with the concurrence of the "municipal cabildo."

This means the municipal council. Apparently there was a cabildo only in Spanish towns.

Blair and Robertson say:

> In the few Spanish towns in the islands the local government was similar to that which prevailed in America, which in turn was derived from Spain. That of Manila may be taken as an example. The corporation, *El Cabildo* (chapter) consisted of two ordinary *alcaldes*, eight *regidores*, a registrar, and a constable. The *alcaldes* were justices, and were elected annually from the householders by the corporation. The *regidores* were aldermen and with the registrar and constable held office permanently as a proprietary right. These permanent positions in the *cabildo* could be bought and sold or inherited. (1 Blair and Robertson's "Philippine Islands," 56.)

Possibly there was no strict cabildo except in a ciudad or villa; but quite certainly there was none in towns of native origin or kind, having a gobernadorcillo and principales. Even if that be wrong, principales did not constitute a cabildo. In the discussion under point IV full quotation has been made concerning the personality and status of principales; and it was there also shown that both a gobernadorcillo and principales are features of a native town.

5. Law 8 requires that the grant be signed by the viceroy or president and deputies, and perhaps also by the members of the cabildo, "in the presence of the clerk of the cabildo." The grant to Lacson had no such signature.

6. Law 8 also requires that the grant under it "be recorded in the book of the council (cabildo)." The grant to Lacson is not shown to have been recorded anywhere. The document given in evidence (Rec., p. 11) merely says that Lacson appeared before the gobernadorcillo and principales at the town hall in Mabalacat and that "the present document" was signed by them, "and is O. K. by the reverend parish priest." Here is no evidence of a record even in Mabalacat; and certainly the grant was not recorded in "the book" of any cabildo.

Concerning such a point this court has said:

> *Another objection to the title is that there is no record of its existence in the archives of New Mexico.* Although no question is made as to the genuineness of the papers set forth in the foregoing statement of fact, namely, the petition of Sandoval, its allowance by Governor Armijo, the certificate of the comptroller and acting treasurer, and the certificate of the delivery of juridical possession by the justice of the peace, yet none of these came from the archives of the country, and there is no record that the departmental assembly ever concurred in the grant, as is necessary under the law of 1824. (Reynolds, p. 142, sec. 5.) If the approval of that body could not be obtained, the governor was to report to the supreme government, forwarding the proceedings in the matter for its consideration. Sec. 6. Nothing of this kind appears in the archives or in the records of the assembly. Nor has there been produced even from the

hands of the claimants any approval of the grant by the assembly. *No matter how formal and complete the written documentary evidence of title may be, yet when coming from private hands it is insufficient to establish a Mexican grant if there is nothing in the public records to show that it ever existed.* *Peralta* v. *United States*, 3 Wall., 434, 440.

Whitney v. *United States*, 181 U. S., 104, 109.

Mr. Justice Davis, in delivering the opinion of the court in that case, said, p. 109:

> The Mexican nation attached a great deal of form to the disposition of its lands, and required many things to be done before the proceedings could ripen into a grant. But the important fact to be noticed is that a *record* was required to be kept of whatever was done. This record was a guard against fraud and imposition, and enabled the government to ascertain with accuracy what portions of the public lands had been alienated. *The record was the grant*, and without it the title was not divested. The governor was required to give a document to the party interested, which was evidence of title, and enabled him to get possession; but this "titulo" did not divest the title, unless record was made in conformity with law.
>
> The title here is incomplete because there is no evidence whatever of approval by the assembly, or, failing in that, any record of further proceedings to obtain the approval of the supreme government.

In *United States* v. *Teschmaker*, 22 How., 392, Mr. Justice Nelson said, at page 405: "We do not say that the absence of the record evidence is of itself necessarily fatal to the proof of the title; but it should be produced, or its absence accounted for to the satisfaction of the court."

In *Berreyesa* v. *United States*, 154 U. S., 623, the court held that the case came within the principle of those cases in which it had decided adversely to claims made under alleged Mexican grants, all because it did not appear that a grant from the Mexican Government had been "deposited and recorded in the proper public office among the public archives of the Republic." (*Whitney* v. *United States*, 181 U. S., 104, 109–110.)

The cases are numerous where the absence of record of the grant has been deemed important if not decisive.

United States v. *Teschmaker* (22 How., 392, 405).

Luco v. *United States* (23 How., 515, 543).

Palmer v. *United States* (24 How., 125, 128).

Peralta v. *United States* (3 Wall., 434, 439).

Hays v. *United States* (175 U. S., 248, 257, 258).

United States v. *Ortiz* (176 U. S., 422, 426.)

VI.

If either law 1 or law 8 of book 4, title 12, of the Laws of the Indies conferred authority upon town officials to grant royal lands, it is inconsistent with and was superseded by the royal decrees of October 15, 1754, and December 4, 1786; at least as to agricultural lands, such as were comprised in the attempted grant to Lacson.

1. The decree of October 15, 1754, is found transted in 2 White's New Recopilacion, pages 62–67, and

also in Reynolds's Spanish and Mexican Land Laws, pages 50–57. Still another translation of parts of it is in 3 Philippine, on pages 545–547.

The decree of December 4, 1786, is given in Spanish in "Real Ordenanza para el establecimiento é instruccion de intendentes * * * en El Reino de la Neuva-España. De Órden de su Magestad. Madrid, 1786," on pages 1–410. A translation of some of the most important articles appears in Reynolds's Spanish and Mexican Land Laws, pages 59–61; and in 2 White's New Recopilacion, pages 70–72; and in Clarke's Public Land Laws, pages 971–973.

The application of the decree of 1754 is shown by the recital that "I have therefore resolved, that, in the grants, sales, and compromises of royal cultivated and uncultivated lands now made, or *which shall hereafter be made*, the provisions of the regulation shall be faithfully observed and executed" (2 White's New Recopilacion, 62–63).

Article 1 of the decree of 1754 gives sole authority to the viceroys and presidents of an audiencia to appoint the subdelegates for the sale and composition of lands and the confirmation of grants.

Articles 1, 2, and 6 of the Ordinance of 1786 created great divisions called "intendancies," with intendants over them, and also a "Junta Superior," being a board of intendants. Article 6 said: "This superior junta shall not only have *exclusive jurisdiction* of these two branches or objects" [i. e., matters of revenue and of war expenditures] "but of the public property, and

revenue, and community, goods of the towns; for the management and judicial superintendence of which, I confer on this junta what jurisdiction and powers may be necessary, *to the absolute exclusion of all my tribunals*, and it shall be subordinate to my royal person alone, through the Office of the Universal Despatch of the Indies." Clarke's Public Land Laws 971, 972.

Article 81 of this decree of 1786 reads:

> The intendants shall also be judges, with exclusive jurisdiction over all matters and questions that arise in the provinces of their districts in relation to the sale, composition and distribution of crown and seignioral lands. The holders thereof, and those who seek new grants of the same, shall set up their rights and make their applications to said intendants, who, after the matter has been duly examined into by an attorney of my royal treasury, appointed by themselves, shall take action thereon, in accordance with law, and in conjunction with their ordinary legal advisers. They shall admit appeals to the superior board of the treasury, or, should the parties in interest fail to employ that recourse, submit a report thereto, together with the original proceedings, when they consider them in condition to issue the title. The board shall, after examination thereof, return them, either for issue of title, if no correction is necessary, or, before doing so, for such other proceedings as in the opinion of the board

> are required, with the necessary instructions. In the meantime, and without further delay, the necessary confirmation may be made, which said superior board shall issue at the proper time, proceeding in this matter, as also the intendants, their deputies and others, in accordance with the requirements of the royal instructions of October 15, 1754, in so far as they do not conflict with these, without losing sight of the wise provisions of the laws therein cited and of law 9, title XII, book IV.
>
> Reynolds's Spanish and Mexican Land Laws 60, 61.

Both the decree of 1754 and that of 1786 were extended to the Philippines. On November 15, 1864, the superior civil governor of the Philippine Islands caused a letter from the delegate superintendent of the treasury, addressed to himself, concerning the laws in force as to the sale, composition, and distribution of public lands, to be published in the Gaceta de Manila of that day, for the information of the public. It is there stated that royal order No. 725, of July 5, 1862, required the ordinance of the intendants of 1786 and the royal decree of 1754 to be observed until new regulations might be made, which never were made before 1880 (3 Philippines, 548). This letter is rendered by the translator of the Insular Bureau as follows:

> YOUR EXCELLENCY: Replying to Your Excellency's communication of the 18th instant, it is my duty to inform you that by royal order No. 725 of July 5, 1862, His Majesty

ordered that regulations be prepared to govern private individuals and the administration in the denunciation, declaration, and sale of vacant and royal lands (tierras valdias y realengas), and that they prescribe, among other things, when sales are to be made at public auction, if such measure should be advisable, and when not; and that until such regulations should be approved the superintendent conform strictly with the provisions of the laws of the Indies, the ordinance of the intendants of 1786, and the instructions of 1754.

The laws comprised in book 4, title 12, of the Compilation of the Indies relate to the sale, adjustment and distribution of lands, lots and waters. (Here follows a brief statement of the provisions of some of these laws, law 8 being omitted.)

Article 81 of the ordinance of intendants provides that the possessors of lands and those who seek new concessions assert their rights before and present their petitions to said intendants in order that after a hearing on these matters in legal form and in the presence of the solicitor of the treasury (con promotor del Fisco) a decision may be rendered in accordance with law and the opinion of their ordinary assessors; and it provides that the intendants and their subdelegates proceed in pursuance of the provisions of the royal instructions of October 15, 1754, without losing sight of the salutary provisions therein cited and law 9, title 12, book 4. Article 2 of the instructions above cited provides that the judges and justices to whom

jurisdiction may be subdelegated for the sale and adjustment of royal lands act with mildness, temperance, and moderation, orally and not according to judicial procedure, as to those possessed by the natives (indios) and as to those they may specially need for cultivation, agriculture, and cattle raising, because with regard to communal lands and those granted to their towns for pasture or common use (exidos) no change is to be made, and they are to be maintained in the possession thereof and be granted even larger areas, according to the requirements of the population, the provisions of laws 14, 15, 17, 18, and 19, title 12, book 4, of the compilation of the Indies being observed in all these cases.

What I have stated constitutes the legislation in force relating to the sale and grant (adjudicacion) of vacant and royal lands so far as this office is aware.

And by order of his Excellency this is published in the Gazette for the information of the public in general.

P. S. JOSÉ FELIPE DEL PAN.

MANILA, *November 10, 1864.*

The observance of the royal order of 1754 had previously been directed by the royal order of September 21, 1797 (4 Legislación Ultramarina, Rodriguez San Pedro, 688; cited in 3 Philippine, 548). The exact date when the decree of 1786 was extended to the Philippines is immaterial. It was apparently before March 4, 1844 (*Jover* v. *Insular Government*, 10 Philippine, 522, 538).

2. While the confusion in all these things is marked, these general purposes appear:

(*a*) To provide a systematic method of disposing of royal lands, through the action (finally, if not in all cases initially) of the treasury officials, including perhaps the viceroy or other head of the colony as himself head of the treasury functionaries or as the personal representative of the Crown.

(*b*) To secure and enhance the crown's revenue from public lands.

(*c*) To eject trespassers upon the royal lands or compel them to proceed for title in proper way.

The third of these purposes is a natural incident of the second and the second purpose is a natural incident of the first. The design to establish a general system for disposition of the royal lands through the treasury officials, and perhaps also the viceroy or other head of the colony, is unmistakable. The decree of 1754, as already seen, refers in terms to all future grants; and the decree of 1786 says expressly, in article 81, that the intendants shall have "exclusive jurisdiction over all matters and questions that arise in the provinces of their districts in relation to the sale, composition and distribution of crown and seignioral lands." It will be remembered that title 12 of book 4 of the Laws of the Indies is itself entitled "Of the sale, composition, and distribution of lands, lots and waters" (2 White's New Recopilacion, 48). The intent to make the jurisdiction of the intendants cover the subject-matter embraced

within said title 12 of book 4 of the Laws of the Indies is therefore patent. This article 81 of the order of 1786 further says expressly that "those who seek new grants of the same"—i. e., of crown and seignioral lands—"shall set up their rights and make their applications to said intendants." It seems, therefore, to be manifest that grants could not be made of royal lands after 1786, under the laws of book 4, title 12, of the Laws of the Indies, by anybody else than the intendants or perhaps the viceroy or other head of the colony as himself the head of the treasury or the personal representative of the Crown.

3. The interpretation of the decrees of 1754 and 1786 by the Spanish colonial officials leads to the same result.

The following incident, described by Reynolds, shows the power of the intendants to have been exclusive of local authorities in the allotments of land:

> October 22, 1791, the then Commandant-General, Pedro de Nava, with the approval of the viceroy, promulgated at Chihuahua what is known as the "Order of Pedro de Nava." This order provided for the allotment of lands by the captains and commandants of presidios within the presidial jurisdiction. (Hall, p. 42; Compilation, p. 62.)
>
> This "Order of Pedro de Nava" was revoked on the 19th of January, 1793, because in violation of article 81 of the ordinance of intendants, which gave those officers exclusive jurisdiction over the sale, allotment and com-

> position of crown lands in the provinces under their jurisdiction. (Compilation, p. 63) Reynolds's Spanish and Mexican Land Laws, 29, 63.

Also in the Philippines themselves we have seen that in 1864 the delegate superintendent of the treasury said:

> Article 81 of the ordinance of intendants provides that the possessors of lands *and those who seek new concessions* assert their rights before and present their petitions to said intendants, in order that after a hearing on these matters in legal form and in the presence of the solicitor of the treasury (con promotor del fisco) a decision may be rendered in accordance with law and the opinion of their ordinary assessors. (Letter to the Governor, *supra.*)

4. The King of Spain himself, by an order of October 22, 1798, interpreted the ordinance of 1786 in a way that ought to be final. This is referred to in *United States* v. *Moore* (12 How., 209), on page 218, as follows:

> A royal order of 22d October, 1798, addressed to Gayoso, states the receipt of his and Morales's communications "respecting the right of granting and distributing royal lands in the district under your command, which right has been vested in the political and military governor since the order of August 24, 1770," and proceeds thus: "The King has resolved for the sake of the better and more exact observance of the eighty-first

> article of the royal ordinance for intendants of New Spain, that the exclusive faculty of granting and distributing lands of every class shall be restored to the intendancy of the province, free from the interference of any other authority, in the proceedings as established by law, consequently the power hitherto residing in the Government to those effects is abolished and suppressed, being transferred to the intendancy for the future." (2 White's Recop., 478.)

The decision in *United States* v. *Moore* was that in September, 1797, Morales, the intendant, had not power to make a grant; but that was because a specific royal order of August 24, 1770, had vested the granting power in the governor alone in Louisiana (12 How., 217, 218), and also because the ordinance of 1786 had not extended to Louisiana before the royal order of October 22, 1798. Thus the court said:

> In the correspondence of Morales and Gayoso and the authorities in Spain, he refers to the eighty-first article of instructions to intendants as giving some foundation for his claim. The instructions were dated in December, 1787. (1 White's Recop., 360.) They will be found more at length in 2 White, 67, and it will be seen to apply only to twelve intendancies thereby created and expressly named in New Spain; it did not apply to Louisiana. This article seems not to have been sent to Louisiana or been known there until Morales brought the question up in 1797. The royal order of 1798, transferring the power

to distribute the land for the future, is conclusive that the eighty-first article had no application in Louisiana. (12 How., 209, 219.)

It is unimportant for the case at bar whether law 1 or law 8 of book 4, title 12, of the Laws of the Indies continued in force, so far as it may be construed to have given a granting power to the head of the colony, whether as governor, captain-general, or as president of the audiencia, notwithstanding the decrees of 1754 and 1786; but, if either law 1 or law 8 should be construed as enabling town or district officers to make grants, it was inconsistent with the exclusive jurisdiction given by the decree of 1786 to the intendants or perhaps to the viceroy or other governor of the colony as head of the treasury or personal representative of the King.

VII.

The mere fact that the gobernadorcillo and the principales of Mabalacat assumed to make the grant to Lacson can raise no presumption of their authority to make it.

In certain early cases this court announced, with reference to the confirmation of Spanish grants in Florida, the rule that "the presumption arising from the grant itself makes it *prima facie* evidence of the power of the officer making it, and throws the burden of proof on the party denying it." (*United States* v. *Peralta*, 19 How., 343, 347.) If that rule could have application to the present case, the burden of disproving authority in the gobernadorcillo and principales could well be said to have been sustained; but

beyond that, the rule is totally irrelevant to the present case.

This court itself has explained the grounds and scope of such presumption in the cases of *Hayes* v. *United States* (170 U. S., 637, 647) and *Chavez* v. *United States* (175 U. S., 552, 558).

In the Hayes case it was said:

> In this respect the act of 1891 [i. e., establishing the Court of Private Land Claims] is materially different from the statutes construed in the *Arredondo case* (6 Pet., 691). That case concerned a grant by the King of Spain of land in Florida. The statutes under which the court exercised jurisdiction enjoined, among other things, as guides or rules of decision in passing upon a claim "the stipulations of any treaty and proceedings under the same; the several acts of Congress in relation thereto,".etc. In view of provisions of this character, the court, beginning on page 722, devoted much attention to the question, "Whether the several acts of Congress relating to Spanish grants do not give this grant, and all others which are complete and perfect in their forms, 'legally and fully executed,' a greater and more conclusive effect as evidence of a grant by proper authority." Reviewing such acts, the conclusion was reached that it was the intention of Congress that a claimant should not be required to offer proof as to the authority of the officials executing a public grant, but that the court should, in deciding upon a claim, assume as a settled principle that a public grant is to be taken as evidence

that it issued by lawful authority (p. 729). And in the *Peralta case* (19 How., 343), in a proceeding under the act of March 3, 1851, relating to lands in California, the doctrine of the Arredondo case was applied.

But in the act of 1891 the court is required to be satisfied not simply as to the regularity *in form*, but it is made essential before a grant can be held legally valid that it must appear that the title was "lawfully and regularly *derived*," which imports that the court must be satisfied, from all the evidence, that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified (pp. 647–648).

In the *Chavez* case it was said, p. 558:

No presumption that the territorial deputations had authority to make grants can arise from the fact that in some instances those bodies assumed to make them. The case in this respect bears no resemblance to *United States* v. *Percheman* (7 Pet., 51, 96), or to *United States* v. *Clarke* (8 Pet., 436, 447, 453). In those cases it was not denied that the governor had authority in some circumstances to make grants, and it was therefore held that a grant made by him was *prima facie* evidence that he had not exceeded his power in making it, and that he who denied it took upon himself the burden of showing that the officer by making the grant had transcended the power reposed in him. There is in the case before us no evidence that the territorial deputation had the power in any event to

> make grants other than the fact that in some instances it assumed to make them.
>
> The cases heretofore decided in this court, and some of which have been above referred to, show that such fact is inadequate to prove the existence of the authority.

Under these decisions in the *Hayes* and *Chavez* cases, as well as under other decisions of this court, no presumption could be indulged in favor of the grant to Lacson because—

1. Under the statutes relating to the Court of Land Registration of the Philippine Islands a plaintiff or claimant who asks adjudication of his ownership must affirmatively establish his title. (Act 496 of Philippine Commission, sections 30, 36, 37.)

In such a case, therefore, the burden upon a plaintiff who claims ownership is not less than falls upon a claimant in the Court of Private Land Claims. To that effect are *Cariño* v. *Insular Government* (8 Philippine, 151) and *City of Manila* v. *Insular Government* (10 Philippine, 327).

Indeed, this case is just like any ordinary suit between private parties concerning the title to property, wherein the plaintiff who asserts ownership must make it out, showing, if he claims under grant of a public official, that such official had authority to make the grant. (*Florida* v. *Furman*, 180 U. S., 402.)

2. A *gobernadorcillo and principales* are not shown to have authority to grant public land under *any* circumstances; and therefore within the language quoted above from the *Chavez* case no presumption

arises that they acted regularly or under circumstances justifying the act.

3. The character and jurisdiction of a gobernadorcillo, as a mere alcalde or justice of the peace, have been expressly shown; and it is thus affirmatively made to appear that a gobernadorcillo and principales had no granting power. (*Crespin* v. *United States*, 168 U. S., 208.)

The following language from *Whitney* v. *United States* (181 U. S., 104) may be repeated:

> It appears, however, that for some years prior to 1845 grants of land were made not only by governors, but even by alcaldes, prefects, justices of the peace, and by judges of first instance, so that, in the language of one of the judges of the court below, "*it was a poor officer, indeed, who did not assume to be able to dispose of the public domain belonging to the nation.*" *Hence the reluctance to presume the validity of a power because of its exercise* (pp. 114–115).

4. Other cases show the inapplicability of the special statutory rule concerning Florida grants. If the bounds of a grant are ambiguous the presumption is in favor of the narrower grant. (*Whitney* v. *United States*, 167 U. S., 529, 548.)

Approval of a grant by the governor of a province will not be presumed. (*Bergere* v. *United States*, 168 U. S., 66.)

5. Certainly authority to grant can not be presumed from a single attempt to grant. If such a presumption can arise at all, it must be from a repeated or

habitual exercise of the power. A gobernadorcillo and principales are not shown ever to have attempted to grant public land except in the present case.

6. Finally, counsel for appellant specifically plant the grant in this case upon laws 1 and 8 of book 4, title 12, of the laws of the Indies, and their inadequacy is shown. Will a presumption be indulged contrary to the litigant's express assertion?

VIII.

We come now to the claim of title by prescription.

This includes four special claims:

1. The ten-year prescription, with just title and in good faith, under Spanish law.

2. The thirty-year prescription, independently of just title and good faith, under Spanish law.

3. The ten-year prescription under section 41 of Act 190 of the Philippine Commission.

4. The ten-year prescription under paragraph 6 of Act 926 of the Philippine Commission.

These claims will be severally considered, but before entering upon them the evidence as to possession may be reviewed. It has already been argued (Points I and II) that the concurrent finding of the Court of Land Registration and the Supreme Court of the Philippine Islands that possession stopped in 1885 will not be disturbed here. Possession is a matter of fact, as to which this court has said, in *Smith* v. *Gale* (144 U. S., 509):

> This finding of possession is, under the case of *Mining Co.* v. *Taylor* (100 U. S., 37),

> the finding of an ultimate fact and has the same legal effect as the finding of a jury in a special verdict, and the sufficiency of the evidence to support the finding can not be considered upon this appeal. *Idaho, &c., Land Co.* v. *Bradbury*, 132 U. S., 509, 514. (Page 525.)

The evidence in this case, however, amply sustains the finding that there was no possession by appellant or his predecessors after 1885. Leon Lacson testified that his father (the grantee from Mabalacat) held possession about eight years, i. e., to 1881 (Rec., p. 22). Francisco De Guzman, who was "personero" of Carrillo, said that Carrillo ceased cultivating the land in 1885 (Rec., p. 24); that even before that people generally pastured animals upon the land without notifying him as agent of Carrillo (Rec., p. 25); and again he testified specifically and repeatedly that the land was not worked after 1885; saying, in answer to the court, as follows:

> Q. In what year did you go there as an employee of Mr. Carrillo's?
>
> A. In '84 and '85.
>
> Q. And you cultivated the land two years for Mr. Carrillo?
>
> A. Yes, sir.
>
> Q. Then the land must have been cultivated after '85?
>
> A. No, sir; after '85 there was nobody there.
>
> (Rec., p. 27.)

Valentin Morales testified that Tiglao never was seen in possession of the land, and "has not done

anything there yet;" and that he would have known the fact if Tiglao had worked the land, because he owned adjoining property. (Rec., pp. 29, 30.)

Ludovico Narcizo first saw the land in 1882, and testified that he pastured his cattle there from time to time and there was nothing planted on it. (Rec., p. 32.) Teodoro Lacson said that he cultivated some of the land until May, 1888 (Rec., p. 33); but, as the trial court said, "This declaration is in conflict with the testimony of Guzman who was in charge of the land as agent." (Rec., p. 8.)

The clear preponderance of testimony therefore supports the trial court's finding; and, as will later appear, it is really immaterial whether possession stopped in 1885 or 1888, because there certainly was not possession with "just title" (justo titulo) for ten years before 1888.

At no time was more than a very small part of the land cultivated in any way, and such possession as there was consisted largely in mere pasturing. Such evidence, as this court has said, is "of very slight weight." (*Bergere* v. *United States*, 168 U. S., 66, 79, 80; *Whitney* v. *United States*, 167 U. S., 529, 546.)

The rule that large weight is to be given to the conclusion of the trial judge on a question of fact, because of his personal view of the witnesses and also, in a case like this, because of his personal acquaintance with the country, needs only mention. (*United States* v. *Pendell*, 185 U. S., 189, 197.)

IX.

No title was acquired by "ordinary prescription," through possession for ten years under "just title" and in good faith.

The pertinent statutes are:

> Ownership and other real rights in respect to real property shall be prescribed by possession for ten years as to persons present, and by twenty years in respect to those absent, when held in good faith and under a just title. (Spanish Civil Code, sec. 1957.)
>
> By a just title is understood that which legally suffices to transfer the ownership or real rights, the prescription of which is in question.
>
> Title for prescription must be true and valid.
>
> A just title must be proven; it never can be presumed. (Spanish Civil Code, secs. 1952, 1953, 1954.)

This code became operative in the Philippines in 1889; but the law of Spain on this subject was the same before 1889; and that law governs if there was then any prescription in the Philippines. It will be found stated in the opinion of this court in *Hayes* v. *United States* (170 U. S., 637, 649–653).

The pertinent part of the original partidas may be found in a translation made at the instance of the State of Louisiana in "Las Siete Partidas," translated by Lislet and Carleton, on page 382.

As "just title" (justo titulo) and good faith are essentials of this ordinary prescription by ten years' possession, it is important to notice at once that this

court has decided, after consideration of the partidas, the Roman law, and Napoleon and Louisiana codes, that—

> Under all these systems, in interpreting the meaning of what is meant by just title, it has invariably been held that they do not embrace a title made by one who by operation of law had absolutely no power to convey. (*Hayes* v. *United States*, 170 U. S., 637, 650.)

The same case held that possession can not be deemed to be in good faith when it is under a grant which is void by operation of law. It follows that the grant to Lacson in 1873 did not give "just title" if the gobernadorcillo and principales had no authority to make the grant.

This decision in *Hayes* v. *United States*, coupled with the fact that possession of the land in question by appellant's predecessors terminated in 1885, will dispose of the questions of prescription here involved; but, as the successive mesne conveyances under appellant's claim may be asserted to have given just title, it will be convenient briefly to consider the case with reference to a claim of ten years' prescription from the dates of those conveyances.

1. As to ten years from the original grant to Lacson in 1873: There was neither just title nor good faith, under *Hayes* v. *United States*, *supra*.

2. As to ten years from Lacson's conveyance to Carrillo in 1881:

(*a*) There was no just title before 1881; nor was there after 1881, because the grant to Lacson was attached to and made a part of the conveyance

to Carrillo. (Rec., p. 12.) Carrillo therefore had notice of the exact nature of his grantor's claim and consequently of its legal invalidity.

(*b*) While there was no just title, there was also no good faith.

(*c*) Possession stopped in 1885, only four years after the deed to Carrillo.

(*d*) It may be added that Carrillo was an "attorney at law" (his will, Rec., p. 12), and he paid 400 pesos ($200) for land worth at least $25,000. This suggests how the parties actually viewed their title.

3. As to ten years from Carrillo's devise to his wife: The will was made in 1889, but it is not shown when Carrillo died, except that it must have been before his wife's will was made in 1892.

(*a*) All possession stopped in 1885.

(*b*) Carrillo's wife was herself a party to the deed from Lacson, to which a copy of the original void grant was attached. (Rec., p. 12.) Therefore, Carrillo's wife, who took under his devise, had actual notice of the origin of the claim in a void title.

(*c*) Carrillo's wife was a gratuitous taker; and such a grant without consideration can not originate "just title."

In *Nicolas et al.* v. *Jose et al.* (6 Philippines, 589) the petitioners had acquired as their father's heirs whatever interest he had in the land, and had remained in possession of the property for more than ten years after their father's death. The father either had no title or had a title which was bad by operation of law. The lower court held that the transmission

of the father's interest to his heirs constituted "justo titulo." The Supreme Court of the Philippines held the contrary, and said:

> That court [i. e., the Supreme Court of Spain] by judgments of the 21st of June, 1864, the 16th of November, 1871, and the 3d of October, 1878, * * * declared that the transmission of rights to heirs by the death of the ancestor did not constitute color of title [justo titulo] for the purposes of the statute of limitations (p. 592).

No reasonable distinction can be made between the case of heirs receiving land through the death of an ancestor who was in possession of the land without title or with a title bad as a matter of law and the case of a devisee receiving land from a testator who likewise was in possession without title or with a title bad as a matter of law. In each case the successors to the title are gratuitous takers.

4. As to ten years from Senora Carrillo's devise to Maria Paz Juarez and Rosa Juarez:

The will was dated February 5, 1892, but it is not shown when the testatrix died, except that a copy of the will was issued on request of appellant in 1898. (Rec., p. 20.)

(*a*) All possession stopped in 1885.

(*b*) The two nieces of the testatrix, who took under the devise, were mere gratuitous takers.

5. As to ten years from the grant to appellant himself in 1898:

(*a*) All possession had stopped in 1885.

(*b*) Appellant never even tried to take possession.

(*c*) The land was reserved as a military post of the United States under order of the War Department dated October 13, 1903; General Order No. 34. This reservation embraced about 7,000 acres, and its description is given in item 1 in the order (General orders and circulars, War Department, 1903). Appellant admits the property to have been occupied in part by a military post when he filed his petition in 1904. (Rec., p. 2.)

(*d*) Appellant also admits other parts of the land to have been in possession of a railroad when he filed his petition in 1904. (Rec., p. 2.)

X.

No prescriptive title was acquired by appellant through thirty years' possession.

The Spanish law was:

> Ownership and other real rights in respect to real property shall also be prescribed by the uninterrupted possession of the same for thirty years, without the necessity of title or good faith, and without distinction of persons, absent or present, save the exception set forth in article 539. (Spanish Civil Code, sec. 1959).

A like rule existed before 1889, when the Civil Code was extended to the Philippines. (3d Partidas, Title XXIX, law 21; Schmidt's Civil Law of Spain and Mexico, p. 291.)

A translation of the reference to the Partidas will be found in Lislet and Carleton's "Laws of Las Siete Partidas," page 384.

The difference between the Civil Code and the Partidas in respect of the requirement of good faith need not be urged. Sufficient answers to the thirty-year claim are:

1. The possession wholly stopped in 1885—twelve years after it began.

2. There is not a scrap of testimony of any possession after 1888. Even if this court will review the findings of the trial court and the Supreme Court, the possession must certainly be found not to have endured beyond 1888. (See review of evidence in Point VIII, ante.)

Appellant does not claim possession in 1904, when he filed his petition, and it is admitted that he himself never took or had possession at any time under his deed, made in 1898. On the contrary, the United States took possession at an unstated time before 1904 for the purposes of a military reservation, and before 1904 there was also a railroad on parts of the property.

3. American sovereignty began in 1898. General Merritt proclaimed the establishment of the military government in Luzon on August 14, of that year. The treaty of Paris was signed December 10, 1898, and ratifications were exchanged April 11, 1899 (30 Stats., 1754). Since the beginning of American sovereignty, whatever may have been true before, prescription could not run against the State.

In *Hayes* v. *United States* (170 U. S., 637) it was said:

> As the ordinary prescription could not apply, and as the necessary time for the extraordinary

> prescription under the Spanish law had not run at the time of the acquisition of the territory by the United States, and as, clearly, whatever may have been the rule as to the operation of prescription against the Spanish or Mexican Governments, it did not run after the treaty against the United States, it follows that the claim of prescription is without foundation (p. 653).

In *Hays* v. *United States* (175 U. S., 248), where prescriptive possession had begun in New Mexico but had not been completed before this country acquired the territory by the treaty of 1848, this court also said:

> It would seem to follow from the general principle of law, so often asserted, that the statute of limitations does not run against the Government, that no length of possession since the treaty of 1848 would of itself give a valid title to land. How far the long-continued possession prior to the date of the treaty would be operative against the Spanish or Mexican governments is a question which does not arise in this case, where the possession did not exceed six years (p. 260).

XI.

The royal decrees of June 25, 1880, and February 13, 1894, concerning adjustment of title to public agricultural lands, forbade the use of any possession prior to February 13, 1894, as a basis of prescriptive title to agricultural lands against the King unless such possession conformed to the requirements of articles 4 or 5 of the decree of June 25, 1880, viz, ten years before June 25, 1880, by virtue of a just title and in good faith (article 4), or twenty years under cultivation or thirty years without cultivation before

June 25, 1880 (article 5), or unless such possession conformed to the requirements of article 19 of the decree of February 13, 1894, viz, as respects this case, thirty years before February 13, 1894. There was no possession by appellant or his predecessors conforming to such requirements; and the decrees of June 25, 1880, and February 13, 1894, therefore made such possession as appellant's predecessors had before the latter date unusable for any purpose.

The pertinent parts of the decree of June 25, 1880, are:

> ART. 1. For the purposes of these Regulations, and in accordance with law 14, title 12, book 4, of the Recopilacion de Indias, all uncultivated land, soil, or ground which have no legitimate private owner, or, what is the same thing, which have never passed to private ownership by virtue of a gratuitous or onerous concession (grant) from a competent authority, shall be considered royal lands.
>
> ART. 4. For all legal purposes, as owners of the royal lands in question shall be considered such persons who may establish that they have possessed them without interruption for ten years, by virtue of a just title and in good faith.
>
> ART. 5. Likewise, such persons who, holding no title, shall establish that they have possessed such lands without interruption for twenty years, if they be under cultivation, and for thirty years, if they be not under cultivation, shall be considered the owners thereof; in order that land may be considered under cultivation, it is necessary to establish that it has been cultivated during the three preceding years.
>
> ART. 6. Persons interested who may not be included in the two preceding articles,

may legalize their possession, and, therefore, acquire the ownership of the lands mentioned, by means of adjustment made in the following manner: * * * 5. Persons who, having no title whatsoever, are in possession of lands of the State and have placed them under cultivation, may acquire the ownership thereof upon payment to the public treasury of the price which may have been established on the day they or their predecessors improperly entered upon the enjoyment of the usufruct thereof.

6. If such lands shall not have been broken, but are uncultivated or covered with brush, ownership thereof can be acquired only upon payment of the price at which they may be valued at the time of making the claim, as stated in the fourth paragraph.

ART. 8. If the person interested should not request within a period of one year the adjustment of the lands they improperly enjoy, or, if they should have been granted by the superior authority, they should fail to perfect their agreement by paying the sum due from them to the treasury, the latter, availing itself of its right, shall recover the property of the state and shall proceed to sell at public auction, after the proper appraisal thereof, that portion of the land which, owing to its state of cultivation, or because it does not pertain to the forestry zone, it is not advisable to preserve as a state forest.

ART. 11. The general director of the civil administration shall have charge of the hearing and determination of the proceedings

relating to the adjustment of royal lands and of the incidental issues which may arise.

ART. 12. The persons interested shall present their petitions within the term which, dating from the date of the publication of these regulations in the Gazette of Manila, is fixed in article 8, to the director general of the civil administration, stating therein the name of the town (pueblo) and site (sitio) in which the land whose adjustment they seek is situated, also setting forth the metes and bounds and the approximate area thereof.

ART. 17. The governor-general shall issue the proper provisions in order that the greatest publicity possible may be given to these regulations throughout the islands, and in order that the facilities furnished thereby to legalize illegal possession of lands of the State and acquire the ownership thereof may become known, and ignorance may not be pleaded if petitions are presented beyond the period fixed in article 8.

ART. 18. All provisions of a date prior to that of the royal decree approving these regulations are hereby repealed, in so far as they are in conflict with the provisions hereof.

The entire decree may be found in Spanish in The Gaceta de Manila of September 10, 1880. The foregoing translation is made by the translator of the Insular Bureau. Another translation of several of the foregoing articles is found in *Valenton* v. *Murciano* (3 Philippine, 537), on pages 548–550.

Appellant's predecessors had no possession conforming to the requirements of articles 4 or 5, because

the grant to Lacson was made in 1873, only seven years before 1880. There is no claim that appellant or his predecessors ever sought adjustment or made any application of any kind under either the decree of 1880 or the decree of 1894. The time for an application expired under the decree of 1880 with one year (art. 8) from the publication of the decree in the Gaceta de Manila, September 10, 1880 (art. 12). Had appellants sought an adjustment, they would have had to pay a certain price for the land (art. 6, subdivisions 5 and 6). They not having sought an adjustment, the State's title was reasserted by the decree and was freed from any influence of prior possession (arts. 1 and 8).

It is true that the time for application to adjust under this decree of 1880 was repeatedly extended; e. g., on April 19, 1881; on July 28, 1882; on June 26, 1884; on December 28, 1887 (Spanish Public Land Laws, Philippine Islands, Washington, Government Printing Office, 1901, pp. 42, 44). Appellant's predecessors, however, took no advantage of any of these extensions. Consequently they operate increasingly against appellant, through certainly cutting off any right to use for prescription a possession prior to the last date when application for adjustment could have been made.

We turn now to the decree of February 13, 1894. A faulty translation of this is found on pages 9–17 of the publication last referred to (Spanish Public Land Laws, Philippine Islands). The original Spanish

appears in the Gaceta de Manila of April 17, 1894. The parts important here are:

> ART. 4. Full title to all crown lands which were open to adjustment in accordance with royal decree of June 25, 1880, but which adjustment has not been applied for up to the date of publication in the Manila Gazette (April 17, 1894) of this decree, shall be understood therefrom as having reverted to the state.
>
> No claim shall be allowed, under any form, or at any time made to any party who, having the right to such adjustment, has, nevertheless, up to the date above mentioned, neglected applying for adjustment.
>
> ART. 7. No petition for the adjustment of lands shall be received after the publication of this decree in the Manila Gazette.
>
> ART. 19. Parties in possession of alienable crown lands which are under cultivation and who have not obtained nor petitioned for adjustment up to the date of the publication of this decree in the Manila Gazette may obtain free title deeds to the property by means of "possessory proceedings" in accordance with the laws of civil procedure and the mortgage law, provided they have fulfilled one of the following conditions:
>
> First. To hold or to have held them under cultivation without any interruption during the last six years.
>
> Second. To have held them in possession uninterruptedly during twelve years, having them under cultivation at the time of the

"possessory proceedings" and during the three years preceding thereto.

Third. To have held them in possession openly and without interruption during thirty or more years, although the land has not been under cultivation.

ART. 21. The nonextendible term of one year is hereby granted for the purpose of instituting "possessory proceedings," as referred to in articles 19 and 20 hereof.

At the expiration of said year the right of cultivators and holders thereof in obtaining a free title deed to the property shall become extinct, and full title to the land shall revert to the State or to the citizens in common. Such holders and cultivators, claimants to the title thereof, or their successors in interest by absolute title, shall only retain the right of preemption or "tanteo" in the event that the land is sold within five years following the expiration of said one year.

Persons in possession not included in the provisions of this chapter can acquire prescriptive title to alienable crown lands only according to the common law.

N. B.—The foregoing translation of article 19, in speaking of "parties in possession of alienable crown lands *which are under cultivation*," is erroneous. The Spanish is: "Los poseedores de terrenos realengos enagenables *sujetos á cultivo*;" and that means "subject to cultivation" or susceptible of it; i. e., lands in their nature agricultural. This will be found of some importance.

Concerning this decree of 1894 we note:

1. Though appellant's predecessors might have applied for adjustment before April 17, 1894, they made no such application; and therefore "no claim shall be allowed, under any form, or at any time made to any party who, having the right to such adjustment, has, nevertheless, up to the date above mentioned, neglected applying for adjustment" (arts. 4 and 7).

2. The decree allowed by its own force, notwithstanding the prohibitive operation of the decree of 1880 upon the use of possession prior to the time limited for asking adjustment, that persons might obtain free title deeds by means of "possessory proceedings" if, among the other cases enumerated in article 19, possession had existed thirty years or more before initiation of the possessory proceedings (art. 19); but the time for initiating such possessory proceedings was limited to one year (art. 21).

Appellant's predecessors having begun no such proceeding, and not having had possession for thirty years before 1894, the law declared that "full title to the land shall revert to the State or to the citizens in common" (art. 21).

3. The result of the decree of 1894 in the present case is therefore to deprive appellant of the benefit of any possession by his predecessors prior to 1894.

4. Nothing to the contrary of the foregoing results from the statement at the end of article 21 that "Persons in possession not included in the provisions

of this chapter can acquire prescriptive title to alienable crown lands only according to the common law," because this applies to the case of public lands not agricultural in their nature. The persons "not included in the provisions of this chapter" are persons who are not, as article 19 says, "parties in possession of alienable crown lands which are subject to cultivation;" and here we see the importance of the difference between the Spanish and the faulty translation already mentioned. The fact that article 19 refers to lands agricultural in character and so "subject to cultivation," though not actually cultivated, appears also necessarily from its allowance of a possessory proceeding at the instance of a person in actual possession for thirty years without cultivation.

It is accordingly repeated that appellant can have no prescriptive benefit of any possession of his predecessors prior to 1894, whether for purposes of ordinary (ten year) or extraordinary (thirty year) prescription.

There is nothing to the contrary of this in *Cariño* v. *Insular Government* (212 U. S., 449). In that case the claimant and his predecessors had been in possession over fifty years; his title was good by native law in a part of the Philippines "that never was brought under the civil or military government of the Spanish crown" (p. 458). This court said that "it might, perhaps, be proper and sufficient to say that when, as far back as testimony or memory goes, the land has been held by individuals under a claim of private ownership, it will be presumed to

have been held in the same way from before the Spanish conquest, *and never to have been public land*" (p. 460); and finally, with reference to the decree of 1880, Cariño was within the express recognition of good title by article 5 of the decree, because he had been in possession over thirty years, and so this court said that "the applicant's possession was not unlawful and no attempt at any such proceedings against him or his father ever was made" (p. 462). Further, this court said of the bearing of the decree of 1880 upon Cariño's case: "So that when this decree went into effect the applicant's father was owner of the land by the very terms of the decree" (p. 461).

We have seen that appellant's predecessors were not within articles 4 or 5 of the decree of 1880 or article 19 of the decree of 1894, their possession having been altogether insufficient.

XII.

Section 41 of Act 190 of the Philippine Commission does not help appellant.

That section reads:

> *Title to land by prescription.*—Ten years' actual adverse possession by any person claiming to be the owner for that time of any land or interest in land, uninterruptedly continued for ten years by occupancy, descent, grants, or otherwise, in whatever way such occupancy may have commenced or continued, shall vest in every actual occupant or possessor of such land a full and complete title, saving to the

> persons under disabilities the rights secured by the next section. In order to constitute such title by prescription or adverse possession, the possession by the claimant or by the person under or through whom he claims must have been actual, open, public, continuous, under a claim of title exclusive of any other right and adverse to all other claimants. But failure to occupy or cultivate land solely by reason of war shall not be deemed to constitute an interruption of possession of the claimant, and his title by prescription shall be complete, if in other respects perfect, notwithstanding such failure to occupy or cultivate the land during the continuance of war. (1 Public Laws, Philippine Commission, 384.)

Four propositions meet appellant's claim under this statute:

1. The statute does not apply against the State and its property. Its language is wholly general; and such enactments do not affect the State unless it is expressly and specifically named.

Further, section 6 of act 627 of the Philippine Commission reads:

> The provisions of sections thirty-eight, thirty-nine, forty, forty-one, and forty-two of Act Numbered One hundred and ninety, entitled "An act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands," are hereby made applicable to all lands, not more than sixteen hectares in extent, within the limits of any military reservation, notwithstanding such lands would

> be public lands were it not for titles acquired in the manner stated in said sections thirty-eight, thirty-nine, forty, forty-one, and forty-two. (2 Public Laws, Philippine Commission, 290.)

This is a legislative recognition that section 41 of act 190 does not apply against the government except as the later statute expressly makes it; and that exception, introduced by act 627, relates only to possession of lands "*not more than sixteen hectares in extent*, within the limits of any military reservation." Appellant is claiming 1,200 hectares; and, beyond that, his possession could not begin to be adverse to the United States before February 9, 1903, when act 627 was passed, because before that date section 41 of act 190 did not apply against the State at all.

2. Section 41 of act 190 is wholly prospective, and requires ten years' possession after its enactment on August 7, 1901. This results from—

(*a*) The general rule that limitation laws are only prospective unless their express language is retrospective.

(*b*) The language of section 38 of act 190, which says that "this chapter shall not apply to actions already commenced, or to cases wherein the right of action has already accrued; but the statutes in force when the action or right of action accrued shall be applicable to such cases according to the subject of the action and without regard to the form."

If appellant had been at all in possession of this land before 1901, the Government could have sued

him in ejectment, and so if appellant had been in possession before 1901, the right of action against him had already accrued, and thereafter section 41 does not apply, unless ten years' possession is had after its enactment.

Appellant never had any possession in or after 1901.

3. Section 41 certainly does not apply unless some part of the ten years' possession is after its enactment. Otherwise the act would be unconstitutional, except as against the Government alone; and the statute must bear the same interpretation as to its being prospective or retrospective in all cases, whether of government or private land.

Again, appellant never had any possession in or after 1901.

4. Further, even should section 41 be treated as applying against the Government and as applying when any part of the ten years' possession is after its enactment, still possession for less than ten years after the enactment of this statute could not affect the Government's title to public land, because prescription did not run against the United States between 1898 and 1901; and so whatever possession might have existed before American sovereignty began in 1898, the interruption of prescription between 1898 and 1901 would require a new possession for ten years from 1901 onward.

XIII.

Nor will paragraph 6 of section 54 of act 926 of the Philippine Commission help appellant.

Section 54 of said act reads:

> The following-described persons or their legal successors in right, occupying public lands in the Philippine Islands, or claiming to own any such lands or an interest therein, but whose titles to such lands have not been perfected, may apply to the Court of Land Registration of the Philippine Islands for confirmation of their claims and the issuance of a certificate of title therefor to wit: * * *
>
> 6. All persons who by themselves or their predecessors in interest have been in the open, continuous, exclusive, and notorious possession and occupation of agricultural public lands, as defined by said act of Congress of July first, nineteen hundred and two, under a bona fide claim of ownership except as against the Government, for a period of ten years next preceding the taking effect of this act, except when prevented by war or *force majeure*, shall be conclusively presumed to have performed all the conditions essential to a government grant and to have received the same, and shall be entitled to a certificate of title to such land under the provisions of this chapter. (3 Public Laws, Philippine Commission, 72.)

Appellant can found no right upon this statute because—

1. The possession must have been "for a period of ten years *next preceding the taking effect* of this act,"

i. e., next before October 7, 1903. Appellant and his predecessors had no possession during any part of such ten years.

2. This paragraph 6 does not apply to land expressly reserved by the President of the United States for military or other governmental purposes. This land was so reserved by the President on September 1, 1903.

"Public lands," in paragraph 6, would mean such as have not been specially reserved by authority of law, if such qualification were not expressed; but the paragraph does not make the express qualification, for it says: "Public lands as defined by said act of Congress of July first, nineteen hundred and two." This refers especially to section 12 of the act of July 1, 1902, which reads:

> That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as shall be designated by the President of the United States for military and other reservations of the Government of the United States, are hereby placed under the control of the government of said islands to be administered for the benefit of the inhabitants thereof, except as provided in this act. (32 Stat., c. 1369, p. 695.)

The lands designated by the President for military and other reservations are not committed to the control of the insular government. They are no part of

the public domain, as respects the ordinary rules or methods of disposition.

It was said in *Wilcox* v. *Jackson* (13 Pet., 498, 513):

> But we go further, and say, that whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it; although no reservation were made of it.

Paragraph 6 therefore can not apply to the land in suit, which was severed from the general public domain by the President's reservation of September 1, 1903.

XIV.

At most, appellant was a cotenant of Maria Paz Juarez in this land; and he could not ask registration of the title without her joinder as a petitioner in the Court of Land Registration.

Rosa Juarez, appellant's immediate grantor, took under the will of her aunt, Edilverta Juarez, made in 1892; which undertook to devise the land to her and Maria Paz Juarez. (Rec., pp. 14–18.) As a matter of grant, therefore, appellant can claim only a half interest; and, with reference to prescription, there is nothing to show possession by either Rosa Juarez or appellant adverse to their cotenant by conveyance, Maria Paz Juarez. The latter never conveyed to Tiglao.

The witness Lintag testified as follows:

> Q. Did Maria Paz Juarez have any share in the plantation as a coheir of your wife?
>
> A. Yes, sir; but there was a verbal agreement made between the two sisters. (Rec., p. 29.)

This does not show, however, a partition or any transfer of the title. The "verbal agreement" may have been concerning use of the premises. Further, the interest of Maria Paz Juarez could not be transferred to Rosa Juarez by verbal agreement, for the Civil Code, made operative in 1889, enacts:

> CHAPTER THIRD.—*Effectiveness of contracts.* * * *
>
> ART. 1280. The following must be executed by a public instrument:
>
> 1. Acts and contracts the object of which is the creation, transmission, modification, or extinction of real rights on real property.

Act No. 496 of the Philippine Commission, concerning the Court of Land Registration (2 Public Laws, Philippine Commission, 89), says:

> SEC. 19. Application for registration of title may be made by the following persons, namely:
>
> First. The person or persons claiming, singly or collectively, to own the legal estate in fee simple. * * * But the authority given to the foregoing four classes of persons is subject to the following provisos: * * * (*d*) That one or more tenants claiming undivided shares less than a fee simple in the whole land described in the application shall not make appli-

> cation except jointly with the other tenant owning undivided shares, so that the whole fee shall be represented in the action.

Appellant therefore could not apply for registration without joinder of his cotenant. This being so, he can not claim that his cotenant has been defaulted in the case, for he had no right to proceed without her presence as a joint applicant, and therefore had no right to treat her as a defendant or adverse claimant and to have her defaulted as such.

CONCLUSION.

The judgment of the Supreme Court of the Philippine Islands should be affirmed.

LLOYD W. BOWERS,
Solicitor-General.

PAUL CHARLTON,
Law Officer, Bureau of Insular Affairs.

In the Supreme Court of the United States.

OCTOBER TERM, 1909.

MARCELO TIGLAO, PLAINTIFF IN ERROR and appellant,
v.
THE INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS et al., defendants in error and appellees.
No. 37.

IN ERROR TO AND ON APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

SUPPLEMENTAL BRIEF FOR DEFENDANTS IN ERROR AND APPELLEES.

The reply brief for plaintiff in error and appellant seeks to support the grant of the Gobernadorcillo and Principales of Mabalacat to Lacson in 1873 by the decree of the Spanish Cortes enacted January 4, 1813. No mention of this decree was made in appellant's original brief; that decree therefore received no consideration in the brief for appellees; and it is now desired in the shortest way to indicate the numerous reasons which make such decree of 1813 irrelevant to the case in hand.

16100—06

I.

The decree of 1813 was not in force in the Philippine Islands in 1873.

1. The decree was enacted in the revolutionary conditions of 1812 and 1813 in Spain, which grew out of the French invasion; and on the full restoration of the royal power in 1814 it must have ceased to be regarded as effective. During the disturbances of the times the Cortes assumed the functions of a real legislature (Reynolds's Spanish and Mexican Land Laws, p. 30). A constitution was promulgated on March 18, 1812, and the Cortes therein provided a new system for the government of the Spanish colonies (Id., p. 30, 79). It was in pursuance of this same programme that the Cortes issued on January 4, 1813, the decree upon which appellant now plants his title. On May 4, 1814, however, Ferdinand VII, having recovered his liberty, dissolved the Cortes, refused to recognize the representative régime, and reestablished the absolute monarchy (Id., p. 30). It can not be thought that the King permitted this decree of the Cortes to operate, after his restoration to power, in the colonies under his dominion.

We have a specific example in Cuba of the way in which the decree ceased to operate upon the reestablishment of the royal power. This court referred to it in *United States* v. *Clarke*, 8 Pet., 436, as follows:

> A royal order was issued on the 4th of January, 1813, which recites that the general

Cortes have decreed as follows: " considering that the conversion of public lands into private property is one of the measures which the welfare of the people, as well as the advancement of agriculture and industry, most imperiously demands; and desiring, at the same time, that this class of lands should serve as an aid to the public necessities, a reward to the deserving defenders of the country, and a support to the citizens who are not proprietors, the general and extraordinary Cortes do decree:

" All the uncultivated or public lands, and those of the corporation of cities, with the timber thereon or without it, both in the peninsular and adjacent islands, as well as in the ultramarine provinces, except the commons necessary for the towns, shall be made private property.

" In whatever manner these lands be distributed, it shall be in full property."

This order was transmitted to the captain-general of the island of Cuba; but seems to have been repealed on the 22d of August, 1814 (pp. 454, 455).

2. It is not even shown, and it is not probable, that the decree of 1813 ever became operative in the Philippine Islands. The general action, which the decree itself contemplated as precedent to its going into operation, is not known to have been taken in the Philippines; and the time for such action in a remote colony was not sufficient before the reestablishment of the full royal power in 1814.

Article I of the decree contemplates "care being taken in the case of those [i. e., lands] of municipal domains and ownership that their annual revenues be supplied by the most timely means, which, on the proposal of the Provincial Deputations, shall be approved by the Cortes." (Reynolds's Spanish and Mexican Land Laws, p. 83.) Certainly such action and report to the Cortes were conditions precedent to distribution of land under the decree. Article IV expressly and carefully provides for necessary preliminary adjustment of the decree to local conditions; that article reading—

> The Provincial Deputations shall propose to the Cortes, through the regency, the time and the terms in which it may be most convenient to carry out this provision in their respective Provinces, according to the circumstances of the country, and the lands it may be indispensable to preserve for the towns, that the Cortes may decide what is best adapted for each territory. (Id., p. 84.)

Can any such action be supposed to have been taken in the remote Philippines or to have been reported therefrom to the Cortes before that body was dissolved on May 4, 1814? Further, a separation and reservation of half of the public lands for general public purposes was necessary before the remaining half, out of which private grants were to be made, could be ascertained. (Articles VI, VII, and VIII; Reynolds, p. 84.) None of these things are shown to have been done in the Philippine Islands.

3. If this decree ever went into effect in the Philippines, it was repealed by the royal order of July 5, 1862, directing strict observance of the royal decrees of 1754 and 1786; both of which were flatly inconsistent with the Cortes' decree of 1813. (Principal brief for appellees, pp. 53–60.)

II.

The grant to Lacson in 1873 was not made by the official body or in the manner required by the decree of 1813.

1. Grants under this decree were to be made by the "constitutional common councils of the towns" (Articles XI and XVII; Reynolds, pp. 85, 86). These bodies had been established by the constitution of 1812, which lapsed with the restoration of monarchical power. It is not even probable that such "constitutional common councils" ever were established in the Philippines; and it may be readily imagined that if they were established they did not last long after the King regained his power. Any way, the grant to Lacson was not made by a constitutional common council.

2. Certainly a gobernadorcillo and principales were not, in 1873 or at any time, a "constitutional council." The petty character of a gobernadorcillo and the undefined, if not extra-legal, functions of principales were considered in the principal brief (pp. 29–33).

3. Confirmation of the grants by the constitutional common councils was required under this decree of 1813 by "the Provincial Deputation." (Articles XI and XVII; Reynolds, pp. 85, 86.) No such confir-

mation was ever given to the grant to Lacson. Provincial deputations were created by the constitution of 1812 (Reynolds, p. 30); and in countries which remained subject to Spain and did not free themselves by revolt, like Mexico, these bodies must have fallen with the end of the constitutional régime of 1812 and 1813.

4. After providing for distribution of lands as a bounty to persons who had rendered military service, the decree of 1813 required a distribution of lands to others to be made "by lot, and for once." (Article XV.) Passing the point that this language and the general scheme of the decree seem to contemplate an immediate general distribution, instead of a continuous and abiding plan for allotment of public lands, it is enough to say, further, that the grant to Lacson was not made by lot; nor was that grant an incident of any general distribution of land to landless citizens.

III.

The decree of 1813 not having been effective in the Philippines in 1873 and the grant to Lacson not having been made by the officials or in the manner required by that decree, it can not be claimed that such decree made the grant of 1873 to Lacson "just title" (justo título) as an element of prescription.

The case remains in this respect under the control of *Hayes* v. *United States* (170 U. S., 637, 650–653).

LLOYD W. BOWERS,
Solicitor-General.

PAUL CHARLTON,
Law Officer, Bureau of Insular Affairs.

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TIGLAO *v.* INSULAR GOVERNMENT OF THE PHILIPPINE ISLANDS.

ERROR TO AND APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 37. Argued November 1, 1909.—Decided January 3, 1910.

Writ of error and not appeal is the proper method to bring up to this court a judgment of the Supreme Court of the Philippine Islands in a case affecting title to land in Court of Land Registration. *Cariño* v. *Insular Government*, 212 U. S. 449.

In this case the grant involved was made without authority by subordinate officials, was void *ab initio*, and conveyed no title to the original grantee or those holding under him.

A man cannot take advantage of his ignorance of the law, and where all that is done to give him a title is insufficient on its face, the grantee is chargeable with knowledge, does not hold in good faith, and in such a case prescription does not run from the date of the instrument under which he claims.

THE facts are stated in the opinion.

Mr. Aldis B. Browne, *Mr. Alexander Britton*, *Mr. J. H. Blount* and *Mr. Evans Browne* for plaintiff in error and appellant:

The concession of 1873 made by the Municipal Board of Mabalacat did transmit to plaintiff in error's grantor certain rights. Book 4, Title 12, Law 1 of the compilation of Spanish Colonial Laws printed in 1828 in House Doc. No. 121, 20th Cong., 2d Sess., p. 38; see also 3 Philippines, 540; Law 8, Book 4, Title 12, Laws of the Indies permitting applications for land grants in townships where there is a court. As to occupation ripening into title, see Solicitor General's brief in *Cariño Case*, 212 U. S. 449.

Evangelista v. *Bascos*, 5 Philippines, 255, which holds otherwise to contention of plaintiff in error is unsound. Possession under the circumstances of this case confers title by prescription as against the State. See *Cariño* v. *Insular Government*, 212 U. S. 449; Book 4, Title 12, Law 14, Recopilacion de Leyes de las Indias; 3d Partida, Title XXIX, Law 18; § 1957, Spanish Civ. Code War Department, transl. 1899; Mortgage Law of 1893. The Philippine Government Act of July 1, 1902, was meant to carry out in good faith Art. VIII of the treaty of 1898, and all legislation of the United States concerning the Philippines indicates a policy to protect all property rights in land, complete or inchoate, existing at the time of the treaty and held in good faith. As to good faith, see § 1950, Spanish Civil Code for Cuba, Porto Rico and the Philippines. In this case good faith cannot be questioned. See 3 Philippines, 540; and royal order of 1862, cited in 5 Philippines, 548.

The original grantor took under a valid grant and cultivated the land in dispute and some interest or title must have vested by his occupation. In appropriating this land for military purposes, supposing that it was for this land, the authorities made a mistake and that fact cannot affect the owner's interest.

Under the laws for town government as stated in 1 Census Report Phil. Ils. 365, disposition of pueblo lands when approved by the Parish Priest was sufficient to protect title.

The Solicitor General and *Mr. Paul Charlton*, Law Officer, Bureau of Insular Affairs, for defendants in error and appellees:

This court has no jurisdiction of the appeal. Writ of error is the proper method of bringing to this court a case instituted in the Court of Land Registration for registration of ownership. *Cariño* v. *Insular Government*, 212 U. S. 449, 456. The case being here only upon writ of error, the facts must be accepted as found below.

This land was royal domain when the Gobernadorcillo and

Principales of the pueblo of Mabalacat attempted to convey it to Lacson. There is no evidence of proprietorship of any part of the land by the pueblo of Mabalacat. Under Spanish law a pueblo did not become the owner of any part of the royal domain unless special grant was made to it and the extent and boundaries of the grant were specially designated by the proper granting authority, *United States* v. *Santa Fe*, 165 U. S. 675, 691; *United States* v. *Sandoval*, 167 U. S. 278; and even when the lands were specially set apart for a pueblo the fee remained in the King.

Law 1 of Book 4, Title 12, of the Laws of the Indies did not authorize the grant of 1873 to Lacson. That law relates only to grants to new settlers from such lands as have been assigned for the new settlement as a whole by the viceroy, governor of the colony or other representative of the King. It cannot authorize a grant attempted long after a town had come into existence and without any connection with its foundation or early settlement. The attempted grant to Lacson was made 200 years or more after the island of Luzon was made a Spanish colony and an indefinite time after the town of Mabalacat arose. There is no proof that Mabalacat is a town of Spanish foundation or that it ever had any grant of land from which such distribution could be made to individual settlers under Law 1 of Title 12. This law does not contemplate or authorize a grant of 1,200 hectares (some 3,000 acres) such as was made to Lacson. If Law 1, Title 12, can apply at all to this case, it was necessary that the grant to Lacson should be made by the "viceroy or governor thereto authorized by" the King. It did not authorize a grant by the gobernadorcillo and principales. The fact that the Gobernadorcillo and Principales of Mabalacat assumed to make the grant to Lacson can raise no presumption of their authority to make it. *Hayes* v. *United States*, 170 U. S. 637, 647; *Chavez* v. *United States*, 175 U. S. 552, 558. That the viceroy or governor of the colony was the proper granting authority under Spanish law, see *United States* v. *Arredondo*,

6 Pet. 691; *United States* v. *Percheman*, 7 Pet. 50; *United States* v. *Clarke*, 8 Pet. 436; *United States* v. *Segui*, 10 Pet. 306; *United States* v. *Chaires*, 10 Pet. 308; *United States* v. *Seton*, 10 Pet. 309; *United States* v. *Sibbald*, 10 Pet. 313; *United States* v. *Rodman*, 15 Pet. 130; *United States* v. *Acosta*, 1 How. 24; *United States* v. *Peralta*, 19 How. 343; *United States* v. *Workman*, 1 Wall. 745; *Serrano* v. *United States*, 5 Wall. 451.

Law 8 of Book 4, Title 12, of the Laws of the Indies did not authorize the Gobernadorcillo and Principales of Mabalacat to make the grant to Lacson. This law relates only to grants where the royal audiencia sits. That was only at Manila, until February 26, 1886, when a second audiencia was established at Cebu. Law 8 is also limited to grants of land in a ciudad (city) or a villa. Mabalacat, as a pueblo, was neither a ciudad nor a villa. Law 8 requires that the grant be signed by the viceroy or president and deputies "in the presence of the clerk of the cabildo (council)." The grant to Lacson had no such signature. This law also requires that the grant under it "be recorded in the book of the council." The grant to Lacson is not shown to have been recorded anywhere. Concerning the effect of absence of record of a grant, see *United States* v. *Teschmaker*, 22 How. 392, 405; *Luco* v. *United States*, 23 How. 515, 543; *Palmer* v. *United States*, 24 How. 125, 128; *Peralta* v. *United States*, 3 Wall. 434, 439; *Hays* v. *United States*, 175 U. S. 248, 257, 258; *United States* v. *Ortiz*, 176 U. S. 422, 426.

If either Law 1 or Law 8 authorized town officials to grant royal lands, it was superseded by the royal decrees of October 15, 1754, and December 4, 1786,—at least as to agricultural lands such as comprised the attempted grant to Lacson. These decrees provided a systematic method of disposing of royal lands, and the decree of 1786 gave exclusive jurisdiction in such matters to the intendants or perhaps to the viceroy or other governor of the colony as head of the treasury or personal representative of the King.

Appellant acquired no title by prescription. The grant to Lacson in 1873 did not give just title, for the Gobernadorcillo and Principales had no authority to make the grant; and possession cannot be deemed to be in good faith when it is under a grant void by operation of law. *Hayes* v. *United States*, 170 U. S. 637, 650.

MR. JUSTICE HOLMES delivered the opinion of the court.

This case comes by writ of error and appeal from a judgment of the Supreme Court of the Philippine Islands, affirming a judgment of the Court of Land Registration, which denied registration of a tract of land. It is admitted that the facts as found by the two courts may be assumed to be true, *Reavis* v. *Fianza*, *ante*, p. 16; but apart from the concurrence of the courts below the proper proceeding in a case of this kind is by writ of error, and therefore the appeal is dismissed. *Cariño* v. *Insular Government*, 212 U. S. 449. So much being established, the grounds on which the plaintiff in error can claim title may be stated in a few words. On July 13, 1873, the Gobernadorcillo and Principales of the town of Mabalacat in the Province of Pampanga, Luzon, executed an instrument, marked O. K. by the Parish Priest, purporting to grant the land, with qualifications not needing to be noticed, to one Rafael Lacson, under whom the plaintiff in error claims. Possession was held until 1885 and since then has been abandoned. The land was public land. The questions brought here were whether the original grant was valid, or, if not, whether the possession that followed it without interruption for ten years and more conferred title by prescription under the royal decree of June 25, 1880. This decree states the rule of prescription in the usual terms of the civil law. It confers ownership on those who shall establish that they have possessed the lands in question for the requisite time under just title and in good faith. See Civil Code. Arts. 1952, 1953, 1957.

As we understand the later briefs filed in behalf of the plaintiff in error, the vain attempt to justify the grant under the Recopilacion de Leyes de las Indias, Book 4, Title 12, Law 1, is given up, and therefore we shall spend no time upon that. There is, however, an effort to support it under a decree of January 4, 1813. 1 Reynolds, Spanish & Mexican Land Laws, 83. This was a scheme of the Cortes to reduce public and crown lands to private ownership, after reserving one-half for the public debt. When certain preliminaries had been accomplished, as to which we have no information, the other half was to be allotted in the first place to retired officers and soldiers who had served in the present war, &c., as a patriotic reward. Of the remaining land there was to be given, gratuitously and by lot, to every resident of the respective towns who applied, a tract, under certain limitations. The proceedings on these grants were to be had by the constitutional common councils, and the provincial deputations were to approve them. Although this decree purported to apply to crown lands 'in the provinces beyond the sea' as well as to those in the peninsula, it would seem, on the face of it, to have been intended for Spaniards, and to have had but doubtful reference to the natives of conquered territory.

But there are other answers to the suggestion that are free from doubt. The decree has been said to have been repealed in the following year. *United States* v. *Clarke*, 8 Peters, 436, 455. Hall, Mexican Law, 48. But compare *United States* v. *Vallejo*, 1 Black, 541. *Hayes* v. *United States*, 170 U. S. 637, 653, 654. But even if it be assumed, as it is by the argument for the plaintiff in error, that either that or later legislation to similar effect instituted a working system in the Philippines, a large assumption, it is admitted that the conditions of the supposed gratuity were not fulfilled. Our attention has not been called to any law giving authority to the ill-defined body that attempted to make the grant. The land was not distributed by lot, and the essential requirement of approval

by a higher authority was wholly neglected. In view of the admission to which we have referred we find it unnecessary to follow the learned and able argument of the Solicitor-General. There is a hint, to be sure, that the grant may be presumed to have satisfied native custom and may be sustained upon that ground. But such a notion would be a mongrel offspring of Spanish law and ignorance, and no reason is given for making the presumption other than a guess. Unauthorized grants of public lands by subordinate officials seem to have been a noticeable feature in other Spanish colonies. *Whitney* v. *United States*, 181 U. S. 104, 114, 115. The real object of the reference to the decree of 1813 is to found a claim of prescription by showing a just title for the possession which is proved to have been maintained for ten years.

Lacson, the original grantee, held the land until 1881, when he conveyed it to Pedro Carrillo and his wife. Possession was abandoned in 1885 without further change of title. Therefore the only 'just title' to which the possession can be referred is the original grant. The phrase *justo titulo* is explained to mean a title such as to transfer the property, Schmidt, Civil Law of Spain and Mexico, 289, 290; see Partidas, l. 18, T. 29, P. 3; or as it is defined in the Civil Code of a few years later than the decree of 1880, "that which legally suffices to transfer the ownership or property right, the prescription of which is in question." § 1952. Of course this does not mean that the *titulo* must have been effective in the particular case, for then prescription would be unnecessary. We assume, for instance, that if a private person in possession of crown lands, seeming to be the owner, executed a formally valid conveyance under which his grantee held, supposing his title good, possession for ten years might create an indisputable right. But if the public facts known by the grantee showed that the conveyance to him was void, we understand that it would not constitute a starting point for the running of time, and that the grantee's actual belief

would not help his case. Indeed, in such a case he would not be regarded as holding in good faith, within the requirement of the decree, because a man is not allowed to take advantage of his ignorance of law. The subject is fully expounded in *Hayes* v. *United States*, 170 U. S. 637, 650 *et seq.*

All that was done to give Lacson a lawful title was insufficient on its face. Therefore, on the facts known to him he was chargeable with knowledge that he had acquired no legal rights, and it was impossible that the period of prescription should begin to run from the date of the instrument under which he claimed. The possession of Carrillo and his successors, after the conveyance to him in 1881, was not maintained for ten years, and therefore the claim of the plaintiff in error must fail.

Judgment affirmed.